

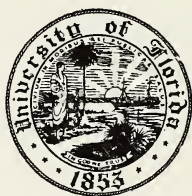
DOLAN

*The Government and
Administration of*
DELAWARE



AMERICAN COMMONWEALTHS SERIES

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AMERICAN COMMONWEALTHS SERIES

W. Brooke Graves, *Editor*

***The Government and Administration
of Delaware***

The Government and Administration of

AMERICAN COMMONWEALTHS SERIES

W. Brooke Graves, *Editor*

DELAWARE

PAUL DOLAN

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MANUFACTURED IN THE UNITED STATES OF AMERICA

To

MY THREE DARLINGS



American Commonwealths Series

THE STATES have always been, and they are today, the key units in American federalism. As Professor Charles E. Merriam has said, "The fact is that if we did not have states, it would be necessary to create them, with the same fundamental purpose that is now our goal, of maintaining the balance between liberty and authority, between central and local, and with an adequate division of functions and responsibilities. We need not apologize for our American states."

There have been books and articles in great numbers on most phases of the organization and administration of the Federal government. The number of organizations and the quality of literature relating to municipal government and administration have reached staggering proportions. For some reason not readily apparent, the states—vital though they are to our federal system—have seldom been given the attention they deserve. Students in the state field have long felt the need for more adequate information on government and administration in the individual states, on which few books have been published, and still fewer good ones.

The publication of the American Commonwealths Series represents a long-range attempt to meet this need. Students of state government everywhere will hail this effort to provide parallel studies of the governments of each of the forty-eight states and the four major territories. These studies are being written by carefully selected scholars, each particularly qualified to write on the government of his own state. Many of the authors are political scientists with nation-wide reputations. Working together as members of a team, they are attempting, in many states for the first time in the history of the state, to present a complete description and analysis of state governmental institutions and procedures on a sound scholarly basis.

It is believed that these volumes will have a wide variety of uses. They

will provide suitable text material for a growing number of college and university courses, many of them required by law, dealing with the governments of the individual states. They will provide reference material and supplementary reading for high school seniors, and for libraries of all types—public and private, general and specialized, school and college. They will also provide reliable information on state matters for a large number of citizens and citizen organizations whose members are in a position to provide civic leadership—editors, journalists, radio commentators, the clergy, members of the bar and of the teaching profession, and others, as well as service clubs, veterans' groups, taxpayers' organizations, chambers of commerce, and many, many more. These volumes should also be of use to such women's organizations as the League of Women Voters, the American Association of University Women, and a large number of women's literary, civic, and other clubs. Government officials in all three branches of government, and at all levels, will find in them a wealth of information on all sorts of questions, outside of their own fields of interest or specialization, on which they need to be informed. Most important of all, perhaps, is the fact that, as this Series grows, it will provide for scholars a vast storehouse of comparative information on the history, development, and present functioning of government in the American states.

W. BROOKE GRAVES

Editor's Introduction

A FRIEND of mine observed a few years ago that every state in the Union must be unique in some respect. "It must," he wrote, "be the largest or the smallest in either area or population; it must have the greatest wealth or the greatest per capita income; it must have the highest birthrate or the lowest deathrate; or it must produce the most oil or cotton or wheat or corn or cattle or hogs or grapefruit or spinach or hay, though it seldom boasts of having the highest rate of crime, juvenile delinquency, illiteracy, illegitimacy, or tax evasion."

In conformity with this tradition, Delaware enjoys the distinction of being the first state to ratify the Constitution of the United, and in area, of being next to the smallest state in the Union. In population, it ranks forty-sixth, and has a far greater population density per square mile than many other states. It has fewer counties than any other state that uses the county system. The two houses of its legislature are as small or smaller than those of other states, and the total number of members is smaller than that of any state except Nebraska, which has only one chamber.

In spite of all these distinguishing characteristics, however, Delaware is, in most ways, pretty much like other states. Its governmental institutions follow essentially the same organizational pattern one finds elsewhere, and its departments and agencies provide for its citizens the same multitude of services that are provided in other and larger jurisdictions. The problems that confront Delaware differ from those of other states in extent but not in kind. As in other jurisdictions, increasing costs, an increasing population, and the persistent demand for new and more adequate services are straining the financial resources of the people and creating fiscal problems quite as serious as those confronting the taxpayers in other states. Delaware is having to cope, on a smaller scale, with the same problems of urban growth, metropolitan areas, and industrialization that confront the larger jurisdictions in the family of American states.

Partly, perhaps, because their state is old in years and so small in size,

the residents of Delaware have a pride in their state and its institutions that is not excelled by the citizens of any other state. This pride in the heritage of an historic past has created some interesting paradoxes. It appears to have made Delawareans even more reluctant than are the people of other states to make the changes in governmental organization and procedure that are indicated by the new and ever-changing conditions of modern life. Seemingly unwilling to give their governor the powers he needs to do his job, they have none the less been willing to centralize authority over schools, roads, and welfare to an extent found in few other states.

In describing and analyzing so well the governmental institutions of his state, Professor Dolan has rendered a real service, not only to the citizens of Delaware, but to those of other states as well. He has given all of us new cause to ponder the question as to why states that vary so greatly in size, tradition, and point of view are at one and the same time so much alike and yet so different, one from another.

W. BROOKE GRAVES

The Library of Congress
April, 1956

Preface

THE STUDY of state government and administration has tended until fairly recently to treat the states as a composite rather than as a series of discrete political entities. The opportunity afforded by the publishers to present each state in its social and political setting is a welcome contribution to the field of governmental analysis in the United States.

The present study of the government of Delaware seeks to relate the political and administrative arrangements in their formal and informal aspects to the political and social patterns that have made up the community of the First State. Although it is readily agreed that the findings of this intensive investigation may have application primarily to the furtherance of research in government in Delaware, it may well be that some insights into the practice and theory of governance in other commonwealths may also be furnished.

The author has had much encouragement and great help from public-spirited citizens throughout this state, and it has been the constant contact with these persons over the course of the study that has made it a pleasure rather than a drudgery. It would be impossible to list all those who have aided, and a general but heartfelt thanks is hereby expressed. To Leon deValinger, the State Archivist, who made available most of the source materials on which this investigation is based, a very special appreciation must be directed. To my students in state and local government courses over the period of the past three years I voice my debt and my gratitude. Their open and quick opinions as sections of the first drafts came to light made the final revisions sharper and, I believe, more accurate. To Professor W. Brooke Graves, I am most grateful. His was the criticism based on long experience in the field of research in state government without which this book could not have been written.

PAUL DOLAN

*Newark, Delaware
April, 1956*

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AMERICAN COMMONWEALTHS SERIES

W. Brooke Graves, *Editor*

***The Government and Administration
of Delaware***



CHAPTER 1

The State and Its People

MANY TREATISES on state government tend to focus attention upon the institutions of governance. Little effort is made to relate the institutional structure to the vital elements in the political process. It is the lack of such treatment that results in an unrealistic approach to the study of the governmental operation.

In this account of the government of the State of Delaware the attempt will be made to bring in close rapport the mechanics of government and the political and social realities underlying the governmental process.* It matters little whether one speaks of the governor's office, the legislature, the courts, the fiscal arrangements, the educational, welfare, or health organizations within the state government; the description of these agencies must include a discussion of their political aspects if the treatment afforded them is to be thorough and penetrating. Analysis of this kind must be careful to avoid approaching the political situation only from its partisan view. At state level one must think of politics in a somewhat broader sense than that of it being merely a conflict between parties. Sometimes partisanism becomes all absorbing, yet the study of partisanism alone is not enough to give an understanding of how public policy is produced out of the multitude of interests that abound at the state level. No party, or two parties in juxtaposition, can in themselves give full expression to the swirling

* "Since every government confronts a different situation from every other—different in its economic conditions and resources, different with respect to the character and composition of the population, different in its geographical features, different in the imprint of the social heritage upon the land—no government is the mere replica of a type. Each has its peculiar and distinctive quality, and each can be comprehended and assessed only through intimate knowledge of its particular being."—Robert M. MacIver, *The Web of Government* (Macmillan, 1947), p. 164.

force of the many societal demands as they, with one mighty rush, converge upon the public forum.

The fact that the states, much more than the Federal government, are concerned with the daily routine affairs of the people makes them extremely vulnerable to the impact of popular demand. In matters of public health, education, and welfare, the states must deal at first hand with the immediate situations presented in these areas. The politics involved in meeting these situations is often a matter of resolving conflicting mores and attitudes of mind which reflect the forces of tradition, sectionalism, and personalism usually found in bold relief at state level. Often the concepts of public value change so quickly that party politics finds itself incapable of easy adjustment to their demands. Politicians, of course, will strive constantly to relate all public policy making to partisanship, but in the main, public decision taking transcends the power of parties.

Thus, it is in the larger sense of "politics" that we must make our investigations if we would come to grips with the realities of governance in a state. We must watch the responsible state officials and often the unofficial power groups behind them as they react to the articulate forces within the body politic. From such a reaction evidence of informal governmental practices can be gleaned. Politics at the state level is more often than not a highly informal relationship of government official and private citizen or groups in which the successful function of the former is almost completely dependent upon the cooperation of the latter. Perhaps in a larger and more populous state this relationship is not so readily apparent, but in a state the size of Delaware both in area and population, its presence can be observed immediately. Recognition of this relationship between officialdom, politician, and citizenry is basic to an understanding of government in the First State.* It is to a presentation of the demographic and political factors behind this relationship that the effort of this chapter is directed.

THE STATE OF DELAWARE

Historical Background

Delaware is situated at the top of the Del-Mar-Va Peninsula, a tradition steeped region that separates the Delaware and Chesapeake Bays. The map of the State, set in a certain way, resembles an old Dutch shoe. This is the mark, say the legends, left by the Dutch, one of the three early peoples who settled the "lower counties on Delaware." The Hollanders

* So-called because Delaware was the first state to ratify the Federal Constitution, December 7, 1787.

were the first to arrive.* Their ill-fated colony, situated near what is now Lewes in the southeastern end of the State, vanished almost without a trace. Nearly a decade later, in 1638, the Swedes appeared, only to be routed by the Dutch under Stuyvesant, who again assumed sovereignty in 1655. Eleven years passed, and James, Duke of York, drove the Dutch out of their seat of colonial authority in New Amsterdam. With this overthrow the Netherlands lost its holdings on the Delaware. The English rule continued until the American Revolution upset the British Crown in the seacoast colonies. Delaware became one of the thirteen original states of the new American republic, and in 1777 it joined the Confederation under the Articles. With the proposal for a new government in 1787, Delaware became a charter member of the United States of America.

During most of the nineteenth century Delaware remained a conservative tide-water community, little disturbed by the rumblings of westward migration or the slowly evolving pattern of urbanization, which set the course of the more industrially-inclined states of the eastern seaboard.

Politics was conducted largely on a personal level, and over the whole of the political operation a sense of gradualness and moderation prevailed. Political change has always come slowly in Delaware; as witness the fact that the Federalist Party continued there until the 1830's.

The War of 1812 had little effect upon the tranquillity of the State. Apart from a few naval skirmishes off the capes, the war passed it by. However, Delaware did contribute a hero to that struggle in the person of Commodore Macdonough, who led the American squadron against the British on Lake Champlain in 1814.

Although no battles were fought in Delaware during the Civil War, that conflict had a lasting effect upon the First State. Delaware, a border state in more than a geographical sense, experienced the problems of a divided people. The loyalties of the downstaters lay largely with the South, while most of the people of the northern area, New Castle County, leaned toward the Union. However, the presence of Federal troops, the activities of the United States Navy, and the help of Maryland home-guard units kept Delaware safe for the Union. Slavery was an accepted institution, however, and the State refused for a long while to ratify the Thirteenth, Fourteenth, and Fifteenth Amendments. Negroes were kept in political subjection until well into the twentieth century.

Until 1830 the State was largely rural with little industry other than some small factories along the Brandywine and Christina Rivers in the north. After the Civil War, industry began a slow development, and naturally, with it came a gradual increase in the urban population. It was

* For a good general history of Delaware, see Henry C. Reed (ed.), *Delaware, A History of the First State* (New York: Lewis, 1947), 3 vols.

not until World War I that the agrarian character of the State was changed; after 1920 Delaware was no longer essentially agricultural. Alongside the farm rose the factory and the office building, and the face of Delaware society was altered.

Because it is a small state Delaware has never played a large role in national affairs. It has, however, given the Union several excellent statesmen, some able judges, and not a few industrialists whose fame has reached beyond the local scene. Politically it has been conservative with strong overtones of a rural Protestantism which has set the moral climate. Yet there is evidence of a liberalism, which since the turn of the century seems to have become a significant factor in determining the mood of the State.

There has been a definite spirit of enterprise and experiment in government as well as in the people, and it would appear that Delaware is on the threshold of a social and economic development which will revamp its political attitudes considerably.

Physiographic Features

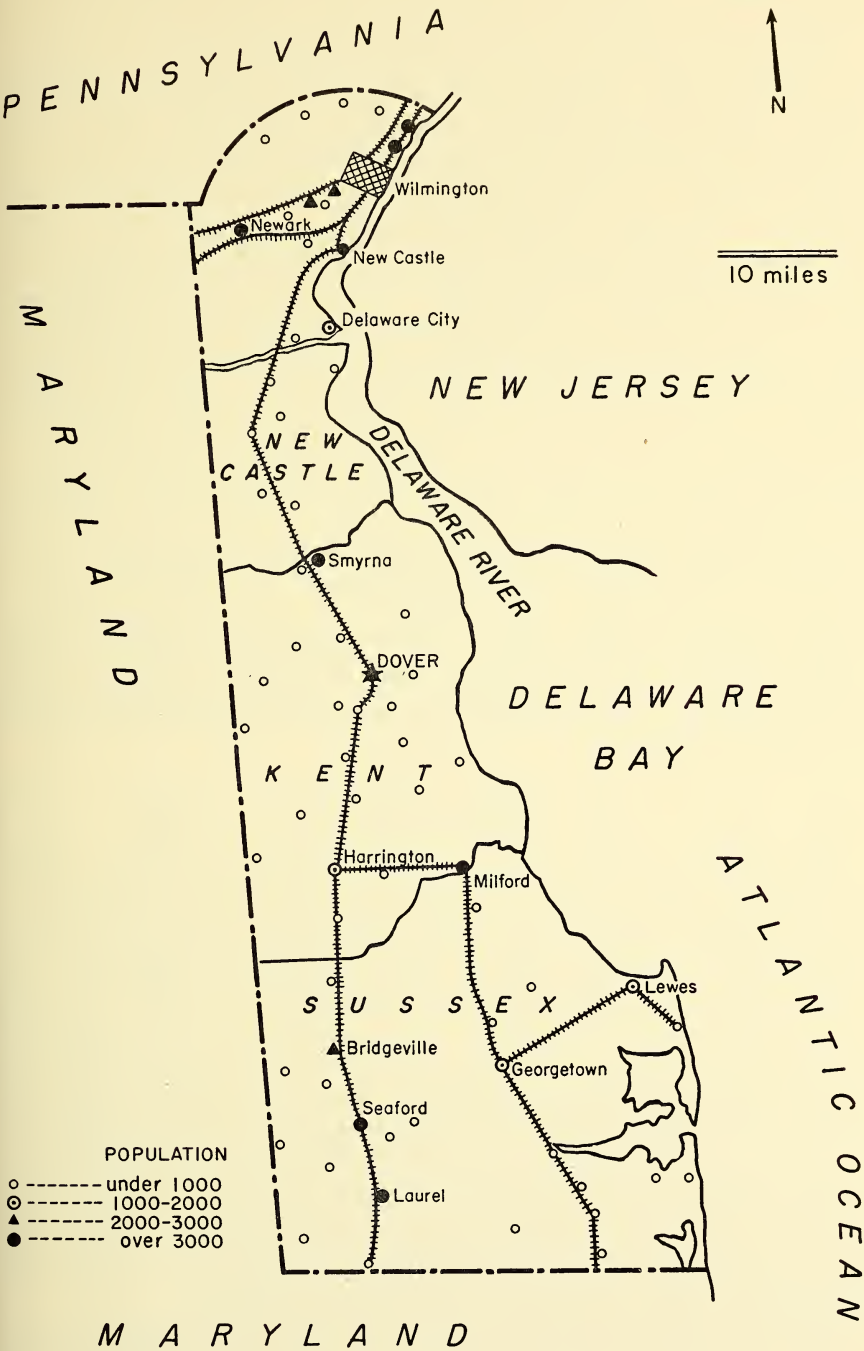
The boundaries of the State are largely the result of colonial controversy between the Penns and the Calverts, over the jurisdiction of the area known as "the lower counties." The colonial surveyors, Mason and Dixon, were called upon to define the southern and western boundaries of the lower counties, and by so doing this territory was set off from the holdings of Charles Calvert, proprietor of Maryland. William Penn had received from James of York the title to the area in 1682. When Penn granted a charter to this territory in 1701 it was separated from the main fief of Pennsylvania by an arc, known as the "Circle." * When Delaware † obtained statehood in 1776, the "Circle" became the State's northern boundary. The Delaware River and Bay and the Atlantic form the eastern edge of the first state in the Union.

The territorial smallness of Delaware is proverbial. The State has been referred to, in jest, as a postage stamp. With pride it has been compared to a diamond. Regardless of the witticisms the fact remains that its land area is such that one can traverse the entire State north to south in less than two hours by automobile and can make the entire circuit of its borders in considerably less than twice that time.‡ It is not quite one

* The terms of the original grant to William Penn made by Charles II resulted in Delaware later assuming jurisdiction over the Delaware River to a low water mark on the New Jersey shore to a point twelve miles southeast of the town of New Castle. In 1934, after a contest by New Jersey the United State Supreme Court decided in Delaware's favor. (*Delaware v New Jersey*, 294 U. S. 694).

† The word "Delaware" is derived from the name given the river in honor of Governor de la Warr of colonial Virginia.

‡ The land surface is 1,961.72 square miles, water surface is 437.51 square miles. See F. J. Marschner and R. O. Bausman "Land and Water Areas of Delaware," in *Delaware Notes* (1939), XII, 111.



MAP OF DELAWARE SHOWING COUNTIES, TOWNS, AND MAIN RAIL LINES

hundred miles in length, and at its widest point it is about thirty-five miles across.

Delaware's small size is the outstanding geographical factor underlying the political scene. Closely aligned with this is the regularity of its topography. The land has a gentle slope seaward. The gradient begins in the rising ground northwest of Wilmington where the highest point does not exceed 440 feet. The land flattens perceptibly at the Chesapeake and Delaware Canal, some ten miles south of the city.* From this point to the extreme southern tip of the State the country is mostly level. The mean elevation is between twenty-five and thirty-five feet. Running down the center of the State is a slight rise wherein lies the source of numerous creeks which empty into the Delaware Bay or Indian River and Rehoboth Bay estuaries. Westward from this same watershed flow many marshy rivulets. They flow toward the duck country of the upper Chesapeake. The fact that most of the State is strung out south of Wilmington and is separated from the extreme north by the Canal splits it into two parts. The southern section approximates the general terrain of the rest of the Del-Mar-Va Peninsula, whereas the northern section is much like that of southeastern Pennsylvania. People in Delaware have exhibited an intense feeling for their localities. Part of this feeling may be attributable to the isolation afforded by the State's location on a peninsula, which until recently was out of the main paths of the intercourse in ideas and trade. This localism has placed an indelible stamp upon the nature of the political process in Delaware.

POPULATION

Population statistics reveal certain characteristics of the people of Delaware that have been significant in the development of the social structure upon which the political process rests. There were 160.8 persons to the square mile in the State in 1950. New Castle County, which lies in the north, had a density of 500.9 persons to the square mile. In 1950 there were 318,085 people in the State. The population has grown constantly with an average decennial increase of 9.16 per cent between 1790 and 1940. Over 50,000 persons were added to the total between 1940 and 1950, and it is estimated that this rate will continue over the next decade.

Until 1830 the Census classified the State as 100 per cent rural; by 1950 it was 62.6 per cent urban. Close to 70 per cent of the population is concentrated in New Castle County. Although many of these people live in suburban areas situated on the fringe of Wilmington, the Census has classified some of them in the rural-nonfarm category.

Since 1920 there has been a decided rise in the rural-nonfarm popula-

* The canal is a tidewater artery capable of accommodating sea-going vessels. It is the water link between Baltimore and Philadelphia.

tion in the State. Most of these people are concentrated in New Castle County, but large numbers are found in the lower counties, where they are employed in hatcheries, mash and fertilizer plants, and in the nylon mills. Over half the working population of Kent, which is often considered a rural county, is employed in small-scale manufacturing and commercial enterprises. Sussex is likewise fast losing its agrarian character. Several small manufacturing plants have been established there within the past decade. The increase in housing developments is giving the southern counties much of the overtones associated with urban living, although the proximity of these counties to the "eastern shore" of Maryland has the effect of making them appear to be located in a rural setting.

The rise of the rural-nonfarm population represents a tendency away from the homogeneity in rural areas that existed previously. The social

TABLE 1

POPULATION OF DELAWARE, URBAN AND RURAL, BY RACE AND NATIVITY, 1920-1950

Year	Total Population	White		Nonwhite		Foreign-Born	
		Number	Per Cent	Number	Per Cent	Number	Per Cent
URBAN							
1950	199,122	173,581	87.2	25,541	12.8	11,310	5.7
1940	139,432	120,964	86.8	18,468	13.2	11,259	8.0
1930	123,146	108,064	87.8	15,082	12.2	13,206	10.7
1920	120,767	107,734	89.2	13,033	10.8	16,815	13.9
RURAL NONFARM							
1950	84,738	70,264	83.0	14,474	17.0	1,637	1.9
1940	81,400	70,807	87.0	10,593	13.0	2,442	3.0
1930	68,932	58,113	84.3	10,819	15.7	2,453	3.5
1920	51,085	42,684	83.6	8,401	16.4	1,852	3.7
RURAL FARM							
1950	34,225	30,033	86.7	4,192	13.7	897	2.6
1940	45,673	38,757	84.9	6,916	15.1	1,132	2.4
1930	46,302	39,541	85.4	6,761	14.6	1,248	2.7
1920	51,141	42,187	82.5	8,954	17.5	1,143	2.2

pattern of the State is being changed by the increase in this group, and the growing importance of its influence upon the political scene is the concern of politician and public administrator.

Important to an understanding of the social structure of the State is the percentage of nonwhite and foreign-born groups in the total population (see Table 1). In 1950 the nonwhite population of Delaware was 13.6 per cent while the national average was 9.8 per cent. Although the highest percentage of Negroes is in Kent, the majority of the Negro population is found in Wilmington. The Negroes are usually found among the lower paid industrial workers and in the serving class. Few of them are farmers.

Negroes in the Wilmington area are making an effort to gain greater

social and economic opportunity. Their numbers make them a significant political factor, and in recent years their organizations have been strong enough to exact promises of the political leaders with respect to improving the caliber of public services in the fields of welfare, health, and education furnished the Negro groups.

Since the early nineteenth century Delaware has had a low percentage of foreign-born in its population. In 1950 the number of foreign-born was 13,844. Most of these people live in the City of Wilmington. Their concentration in the urban area has given them political strength in New Castle County far beyond what would be expected from their numbers. Approximately 10 per cent of the city's population is foreign born. Through their influence in the northern county, however, the foreign born have been able to make exactions of state officials. Both the Negro and the foreign-born groups have tended to support those public officers who have most strongly advocated extension of social services.

TABLE 2
POPULATION OF DELAWARE BY COUNTIES, 1890-1954

<i>Year</i>	<i>Total</i>	<i>New Castle</i>		<i>Kent</i>		<i>Sussex</i>	
		<i>Number</i>	<i>Per Cent</i>	<i>Number</i>	<i>Per Cent</i>	<i>Number</i>	<i>Per Cent</i>
1954	362,000	249,056	68.8	39,820	11.0	73,124	20.2
1950	318,085	218,879	68.8	37,870	11.9	61,336	19.3
1940	266,505	179,562	67.4	34,441	12.9	52,502	19.7
1930	238,380	161,032	67.5	31,841	13.4	45,507	19.1
1920	223,003	148,239	66.5	31,023	13.9	43,741	19.6
1910	202,322	123,188	60.9	32,721	16.2	46,413	22.9
1900	184,735	109,697	59.4	32,762	17.7	42,276	22.9
1890	168,493	97,182	57.6	32,664	19.6	38,647	22.8

Another important factor in the social pattern of the State is the tendency toward the maintenance of a homogeneous population in the two downstate counties. Some idea of the intensity of the pattern of homogeneity in Kent and Sussex Counties may be gleaned from scattered data respecting migration into the State over the past half century. The present census, unfortunately, does not list figures on migration. In 1910, the last year a breakdown into classes born in and born out of the State was given, 58 per cent of the urban population was indigenous compared with 75 per cent in the rural downstate areas. The great increase in population has been in New Castle County. It can be assumed therefore that Kent and Sussex have remained relatively free from admixture. The last decade, however, has witnessed a populational growth in Sussex County, and it may well be that part of the increase is to be attributed to immigration.

Cultural homogeneity in the lower counties has been fostered by the presence there of the Methodist Church. Available data since 1906 show that between 1900 and 1950 one third to one quarter of the church-going

population, or 45 per cent of the total, was Methodist. Of 136 Methodist churches in the State in 1936, 110 were rural and twenty-six urban.* Of the Methodist ministers in the Del-Mar-Va Peninsula during the past fifty years, 92.5 per cent had their first charges in what is now the Peninsula Conference of the Methodist Church,¹ comprising all of Delaware and the nine eastern shore counties (See Table 3.) of Maryland. Many of the older members of this clergy have spent their entire careers in this area. Of the men now holding charges in this Conference, 50 per cent were born in the Peninsula. The rural areas have, therefore, been subjected to a kind of built-in religion that in many ways has carried on the traditional thought patterns of an earlier day, particularly with respect to moral questions.

Running counter to any tendency toward a state-wide religious homogeneity is the presence of the Roman Catholic Church in Delaware. Of the church-going population, 39 per cent are Catholic. The vast majority of Catholics is found in the Wilmington area.† In view of the facts that the Catholic population in the northern county is the largest religious group

TABLE 3
CHURCH MEMBERSHIP IN DELAWARE, 1906-1950

<i>Year</i>	<i>Total</i>	<i>Methodist</i>		<i>Roman Catholic</i>	
		<i>Number</i>	<i>Per Cent</i>	<i>Number</i>	<i>Per Cent</i>
1950	134,600	33,919	25.2	52,359	38.9
1936	112,785	28,873	25.6	39,024	34.6
1926	110,142	33,814	30.7	36,677	33.3
1916	86,524	33,523	37.6	30,110	34.8
1906	75,526	27,718	36.7	28,473	37.7

there and that the Methodists are the dominant religion south of the canal, the religious pattern of the State reflects a cultural disparateness.

The scene in Delaware is fast becoming one of small towns surrounded by unincorporated dwelling areas abounding with people who are not content with the simple existence of a rural folk. Demands for better schools, better roads, more sewers, and adequate public utilities are appearing constantly. Into many of these unincorporated areas have come "outsiders"—people not born in Delaware. The face of Delaware society is being changed to a considerable degree. With this change has come an assault upon the prevailing mores of the State so that today Delaware is a mixture of the remains of an old aristocratic gentry, a decreasing white yeomanry, a growing industrial worker class, and an increasing body of clerical and technical employees.

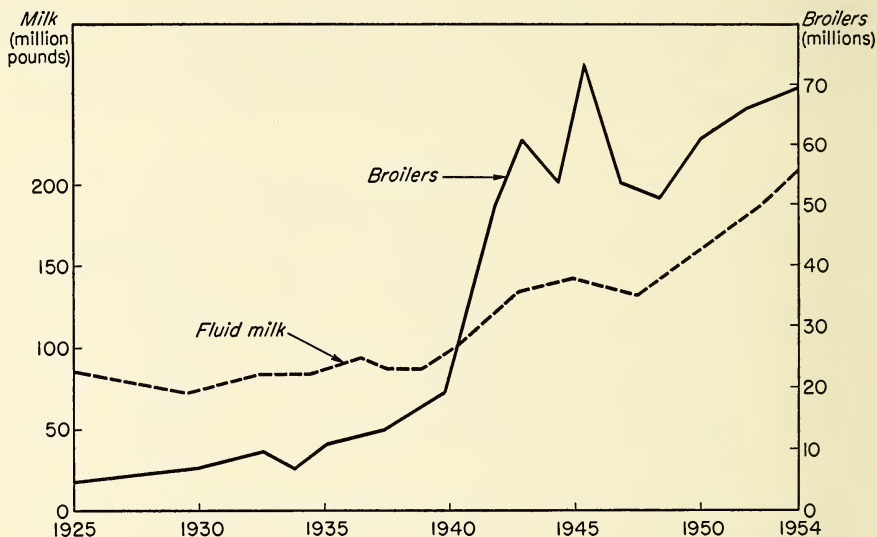
* Four of the "urban" churches were in Kent and Sussex, over 100 of the "rural" churches were downstate.

† Of thirty Roman Catholic churches, nineteen were urban and eleven rural in 1948. There were only six south of the Canal.

Instead of the former atmosphere of friendly neighborliness which had marked Delaware society for more than two centuries, a climate of social disparity has come about. No longer can one say that the average Delawarean is a native-born white American who has lived in the State all his life, a member of the Methodist Church, and engaged in farming as a means of livelihood. The old informal relationships that resulted from the intimacy of localism are fast fading. Yet much of the practice of governance in the First State is still geared to this informality.

Agriculture and Industry

The economy of Delaware has undergone a basic change in the course of the past twenty-five years. Until the 1930's the farm was the keystone



BROILER AND FLUID MILK PRODUCTION, DELAWARE, 1925-1954

of economic activity. The land and the climate are favorable to agrarian pursuits. Sandy loam with a base of clay forms the soil throughout most of the lower part of the State. Small forests flourish in Kent and upper Sussex. In the north, between the canal and the "Circle," the land is far less sandy and has a higher degree of fertility than does that of the southern regions. In New Castle County most of the common vegetables such as corn, tomatoes, peas, beans, and potatoes can be grown with ease. Although fruits and vegetables still account for a sizable share of the down-state farm income, the principal agricultural products there are broilers and fluid milk.²

Although manufacturing since the 1930's has tended to be diffused throughout the State, the bulk of industry in Delaware is still found in the northern section of New Castle County. Strategic location of industrial

plants along the main tracks of the Baltimore and Ohio and Pennsylvania Railroads together with the advantages of a fine port on the Delaware River at Wilmington have made this area a workshop. The region produces a variety of manufactured goods. Ships, heavy machinery, leather goods, paper, and fabricated materials are some of its products. The production of chemicals is of the first rank, Wilmington being the home of E. I. du Pont de Nemours and Company, Inc., Hercules Powder Company and Atlas Powder Company. With Wilmington the home of such industries, commerce abounds. The section is well served by train, truck, bus, and airlines. In metropolitan Wilmington alone there are over 75,000 workers, many of whom are employed by the large explosives and chemical companies.

The western half of Sussex County is beginning to show signs of industrial development. The establishment of the Du Pont nylon mills in Seaford in 1940 was the beginning of this industrialization. With it has come the growth in the rural-nonfarm population in the southern county.

Political Heritage

One factor that has been of great significance in state government in Delaware has been the existence of only three counties. Each county has assumed a sort of sovereignty unto itself. As late as 1897, in the constitutional convention of that year, a member of that body declared that "each county is very nearly as separate and distinct from the others as each state is separate and distinct from other states."³

Politically, the county has formed a rallying point for the local communities, jealous of their governmental prerogatives, against the State's exercise of governmental power. Each locality wishes to be as free as possible from the dictates of the central authority in Dover. To insure this freedom, party organization has maintained its greatest strength at county level, and no county politician would ever be guilty of permitting State power to be aggrandized at the expense of local privilege. The parties in their state conventions follow a strict rule of county autonomy as well as of equality. Choice of candidates for governor and other high ranking state officials is determined under a system of county rotation. Appointments to the state judiciary must be made on a county basis. Although Delaware does not grant the right of a county to exempt itself from certain provisions of a statute (as in Maryland), no proposed law opposed by the representatives of one county could possibly be enacted.

The legal deadlock among the counties prevents the easy translation of the newer state-wide social demands into law; it has also promoted much of the present political frustration in Delaware. In its transformation from a purely agrarian state into one of a mixed economy, Delaware not only has had to comprehend these changes, but has also had the onerous task of revamping the political structure in order to meet the change.

Changes in the societal underpinnings have brought about alterations in the process of government in the First State. Yet any modification of governmental operation must occur in light of the political assumptions which have shaped the machinery of government. At first flush Delaware appears to be a popular, representative democracy. Yet a close look at the basis of representation in the legislature will cast doubt upon the accuracy of this assumption. New Castle County, with over 70 per cent of the State's population, has less than 40 per cent of the members of the legislature. Representation in both House and Senate in the General Assembly is anything but equitable.

Closely associated with the denial of political power to the populous areas of the community there is a latent feeling that public office can be best filled by scions of old established families.

In addition to the position that the family often holds in State affairs is the part played by law firms in the governing process. Membership in certain of the larger and better known firms is a stepping stone to public office. In fact, in some instances, membership in a law office requires participation in public activity. Lawyers in Delaware tend to be extremely politically minded. Often both major parties are represented in the same legal organization. The father-son relationship, quite noticeable in law firms in the nineteenth century, is less common today. In the last century however, it was the decided tendency for the sons of public men of wealth, who were lawyers, to follow in their fathers' footsteps. This situation helped develop a sort of legal aristocracy, the holding of public office being an expression of *noblesse oblige*. Some of this feeling still remains. Marital, filial, and avuncular connections still provide a path to official position in the State.

Although many able men have come to officialdom through family connection, this practice is incompatible with the philosophy arising from the social changes which have occurred within the past twenty years. The more one looks at state government in Delaware today the more he sees the crumbling of the older concepts of governance. Today both major parties are making direct plays for the support of the newer social groups which are rapidly coming of age in the State. The political ideas held by these groups differ from those maintained by the older and more settled segments of society. Doubtlessly these new forces will be combatted by the rugged traditions of the State. The outcome of the struggle, however, is not in doubt. The old, parochial, aristocratic elements are being dissipated. As the physical approaches to the State are made easier by the building of bridges and better roads, the old peninsular environment, which has abetted the maintenance of the status quo, will vanish. The spirit of change is penetrating the thought patterns of Delaware's citizens and is transforming the old established modes of political life. These new views

will be shaped in part by the earlier political usages, yet at the same time they will refashion the political conceptions.

Although an appreciation of the social, economic, and political situation is of the utmost importance to an understanding of governmental institutions, it is also necessary to know something about the legal formulas upon which those institutions operate. These formulas are generally found in the fundamental or constitutional law. We now turn, therefore, to an examination of the constitution of the State.

NOTES

¹ "Pastoral Records," Methodist Church, Peninsula Conference (1947).

² Paul Dolan, *Organization of State Administration in Delaware* (Baltimore: The Johns Hopkins Press, 1951), pp. 23-28.

³ See *Debates in Constitutional Convention in Delaware, 1897* (Dover, Delaware, 1897), IX, 5409. These debates are sometimes referred to as *Constitutional Debates*.



CHAPTER 2

The Constitution

HISTORICAL BACKGROUND

THE PRESENT Constitution of Delaware was drafted in 1897. The State has had three general constitutional revisions since the adoption of its original basic law in 1776. The first revision was in 1792, the second in 1831. Changes in the State's fundamental law have been infrequent, and when effected have reflected a long felt desire for modification on the part of an overwhelming majority of the articulate segments of the population. The demands for manhood suffrage, the popular election of the governor, the erection of an adequate judicial system, and the restriction of the legislature in the administration of such matters as divorce and chartering of corporations have been the sources of the major changes in the constitutional pattern.

The respect for established law and the generally conservative character of the State have tended to prevent a quick alteration of the fundamental frame of government. One can see the slow but steady advance in constitutional thinking over the past century and half in Delaware, and although progress sometimes has come only after patience has been all but exhausted, nonetheless, changes have been made. One of the basic ideas concerning governance in the First State is that time lends to the law a substance that can be gained by no other means. Analysis of the successive constitutional revisions must take this concept into consideration, otherwise the continuity of legal thinking, which is an elemental factor in Delaware's jurisprudence, will not be comprehended.

Constitution of 1776

The Constitution of The Delaware State framed in 1776 made little alteration in the fundamental political assumptions. Few changes, except

in the theory as to the source of public power, were made in the basic law that had governed the colony. The executive power, however, was strictly limited; in fact, the office of governor was abolished. The title given the chief magistrate in the new state was that of president; this magistrate was elected for three years by a bicameral General Assembly, which met annually. The president had no veto power. He was aided in exercising his appointive authority by a privy council, which also acted as an advisory body to the president.

The main spring of government was the legislature. It not only exercised the lawmaking power, but it possessed an inordinate degree of appointive authority. The doctrine of separation of powers was not fully observed in the Constitution of 1776.

The judicial system of colonial days was generally overhauled. In place of the king-in-council, which had acted as the final court of review, a court of appeals was appointed by the legislature consisting of three members from each house and the president. This body served as a council of revision, sitting on appeals from the regular tribunals in both law and equity. The ordinary judicial power was exercised by a supreme court, a court of common pleas, and justices of the peace. The judges of the first two courts were chosen by the president and the General Assembly. The president chose twelve justices of the peace from a list of twenty-four nominated by the General Assembly.

Prior to drafting the frame of government, the members of the constitutional convention of 1776 had adopted a set of resolutions in the form of a "Bill of Rights" in which it was stated that "all government of rights originates from the people." Freedom of religion was limited to the expression that Christians should enjoy "the equal rights and privileges in this State." The right of property was closely tied in with the duty of contributing to the protection afforded in that respect by the government. The rights of petition and of the press were affirmed, but oddly enough, freedom of speech and of assembly were not mentioned. The military power was to be subject at all times to the civil power.

Constitution of 1792

A resolution of the General Assembly in 1791 expressed the feeling that the dependence of the executive upon the legislature for his appointment prevented the "energetic operations of government" and that in some ways the Constitution of 1776 was contrary to the principle of separation of powers in the Federal Constitution, which had been adopted in 1789. Thirty delegates (ten from each county) met at New Castle in convention, and in June, 1792, promulgated a revision of the State's basic laws. Several changes were made in the State's Bill of Rights and it was moved into a prominent place within the constitution itself. The religious test for public office holding found in the Constitution of 1776 was no longer re-

quired, except that clergymen could not hold public office. Freedom of assembly was added, but again no mention was made of free speech. "The Delaware State" became the "State of Delaware" under the new charter. The privy council was abolished, and the names of Senate and House of Representatives were given the two houses of the General Assembly. Property qualifications for voting at state level were abolished. The position of governor was reestablished and made elective by the people.

The judicial organization was revised. The court of chancery presided over by a chancellor was established. The three county courts of common pleas were made a state court, and the judges manning them were to sit in orphans' court and to hold the court of quarter sessions. The supreme court was divorced from its appellate power but continued to handle felonies. The high court of errors and appeals was created. This court consisted of the chancellor and the judges of the supreme court and of the court of common pleas, any four of whom could constitute the final appellate tribunal.

The exclusion of clergy from civil office and from membership in the General Assembly was retained, and the section in the preceding constitution that had prohibited the importation of slaves was repealed.

The Constitution of 1792 provided for amendment by a final three-fourths vote of the legislature without submitting the proposal directly to the electorate. General revision was to be done by a convention duly constituted by popular election.

Constitution of 1831

The unfortunate arrangement of the judiciary, which had caused an overlapping in jurisdiction among the several courts, brought about a demand for a constitutional revision in 1831. The resulting convention drafted a rule that abolished the supreme court and the court of common pleas. In their places were created a superior court that had civil jurisdiction, a court of general sessions with criminal jurisdiction, and a court of oyer and terminer for capital cases. The court of chancery was retained. Five state judges including the chancellor were appointed, each county to have a resident judge. The chief justice sat with one or more of the resident judges in original jurisdiction in the counties. Appeals were taken to the court of errors and appeals, which consisted of at least three judges, one of whom was to be the chancellor, and one of whom was to be a judge who sat in the case below.

The exclusion of the clergy from civil office was retained, and no mention was made with respect to slavery. The governor, still without the veto power, received a four-year term, and the legislature met biennially. Amendments to the constitution were to be made as previously.

The Rejected Constitution of 1853

A proposal for constitutional revision was made in 1853. The period between 1830 and 1850 had been one of growing conflict between the agricultural interests and those centering about the expanding industrial area of the north. Conservatism had prevailed and had been resented by the more progressive elements in Wilmington. Incessant demands for abolition of slavery, prohibition of alcoholic beverages, extension of the suffrage and the elimination of property qualification for the holding of public office were among the leading motives behind the proposed change in the fundamental law. In addition, there was a movement to gain greater representation for Wilmington and New Castle County.

The constitutional convention met in the latter part of 1852 and continued in session until the summer of 1853. Several drastic revisions of the Constitution of 1831 were immediately proposed after the convention had convened. Manhood suffrage was provided for, property qualifications for office holding were eliminated, and greater representation was given to New Castle County in the House of Representatives. The judiciary was to be elective. Amendments to the constitution still had to be proposed by an extraordinary majority of the legislature, and then had to be submitted for popular approval. This last provision was an innovation.

The legality of the convention had been questioned at its start because the popular vote approving its calling did not have the legal majority required by the constitution of 1831. The delegates decided to continue with the meetings, however, and this decision became a point of opposition to final ratification of the proposed constitution when it was submitted to the people. There was also opposition from the lawyers of the State because of the provision respecting the election of the judiciary. Many downstate citizens opposed ratification because of the article permitting increased representation to New Castle County. Faced with such formidable antagonism the proposed revision failed to gain popular approval. Since 1853 no constitutional revision has been subject to referendum.

For almost a half century the State refused to make any basic alterations in its frame of governance. In the meanwhile insatiable demands for general revision continued to plague the governing officials. Finally, in 1896, after several abortive attempts on the part of interested groups in the northern section of the State to call a constitutional convention, approval for the holding of an election to decide whether such a convention should be convened was obtained. This election resulted in victory for the northern forces.

THE PRESENT CONSTITUTION

The Convention of 1897

The constitutional convention consisted of thirty members, ten from each of the three counties. There were sixteen Democrats and fourteen Republicans. Ten of the thirty were lawyers, the rest businessmen and farmers. The deliberations took place from December, 1896, to June, 1897, and are recorded in some fifteen typewritten volumes, the verbatim reports of the convention,* known as the *Constitutional Debates*.

Noticeable throughout the proceedings is the evidence of conflict between persons representing the northern section of the State and those representing the downstate areas. This so-called urban-rural division indicated that deep-rooted fears and prejudices existed in the more extreme groups in each section. Had it not been for the presence of a large number of moderates, the present constitution could not have been drafted. Level heads prevailed, however, and sufficient compromise was effected to create a legal framework within which the public policy of the State could be developed. Unfortunately, from the standpoint of flexibility in the scheme of representation, the basic law of 1897 placed a virtual deadlock upon legislative apportionment by stating that a two-thirds vote of two successive legislatures is the only way reapportionment can possibly be effected. Rural mindedness was given undue advantage, and with rurality controlling the legislative machinery a sort of political frustration has arisen. From the aspect of social harmony this situation has been decidedly harmful largely because large blocs of voters find themselves in virtual strait jackets when attempting to translate their desires into law. Thus some of the assumptions of democracy are difficult to put into practice in face of the theory of representation prescribed by the present constitution.

As a general guide in their endeavors, the members of the convention of 1897 had resource to the earlier constitutions of the State. Most of the members were persons well versed in the political traditions of Delaware. There was little desire to produce any radical change in the fundamental law of the State; in fact a sizable minority was inclined to maintain the Constitution of 1831 practically intact. In addition to the guidance given by the State's previous charters, the convention was aided by the then recently revised constitutions of New York and Pennsylvania. There is frequent reference in the *Constitutional Debates* to the basic "wisdom" of

* No other material presents such a cross section of prevailing opinion concerning legal and political conceptions held by articulate groups throughout the State at that time as does this record.

these states' fundamental laws, and some of the present provisions show close resemblance to provisions in these constitutions.

The Constitution of 1897

The present constitution is relatively short considering the length of most other state constitutions. It contains approximately 15,000 words. There are only sixteen articles a preamble and a schedule designed to ease the transition from the old constitution to the new. Amendments are written directly into the body of the constitution and do not appear as appendages at the end of the document as in the Federal Constitution. This procedure tends to keep the over all size small, and it has the further advantage of exhibiting at first glance the existing clauses of the constitution thus rendering it unnecessary to review articles which have been amended or superseded. The phrasing is in the main direct and quite readable. Most of the articles are brief, one of them (that on health) contains only one section. Several, however, are much too lengthy (for example, the ones on the legislature and the judiciary with twenty-five and thirty-five sections respectively).

The Constitution of 1897 contains several provisions which were not found in the earlier fundamental laws. These changes resulted from pressing demands for constitutional revision, which had culminated in the calling of a convention in 1896. As commercial interests developed in New Castle County during the latter part of the nineteenth century there was constant request for a general corporation law and for the removal from the legislature of the power to create individual corporations. Likewise, many persons felt there should be a general divorce law and that it was wrong for the legislature to grant divorces.* Both these demands were written into the present basic law. In addition there was a standing desire by the people of Wilmington for more equitable legislative representation. Coupled with this desire was a general demand for new apportionment throughout the State. Under the Constitution of 1831 each county was entitled to three senators and seven representatives, but no districting was required within a county. For example, the three Sussex senators in 1896 came from the same town. The new constitution provided that there should be seventeen senatorial and thirty-five representative districts each with clearly defined boundaries. Wilmington received two senatorial and five representative districts.

The Constitution of 1897 also changed the judicial system. Since 1831 the highest court in the State had been the court of errors and appeals. The members of this tribunal also sat in the lower courts; in fact the

* Divorce was also obtainable through the courts, but the evils attending legislative divorce caused much complaint. See *Debates in Constitutional Convention in Delaware, 1897* (Dover, 1897), IV, 2286 ff.

Constitution of 1831 required that one of the judges who had heard a case had to hear it again in appeal. It was felt this situation should be eliminated, and accordingly a supreme court was established in which a judge hearing a case originally could not sit in appeal.*

Modification was also effected in the office of the governor. The law of 1831 had limited him to one term, and he had no power to remove administrative officials. The Constitution of 1897 extended his eligibility to office to two terms and gave him a very limited removal power. He received the power to veto items in appropriation bills as well as that of the regular veto.

The provision of the law of 1831 prohibiting clergymen from holding legislative or other civil posts was abolished. Certain rules regarding the conduct of elections were added, and the method of amending the constitution was altered by a change in the number and selection of delegates to a constitutional convention.

The need for general overhauling of the State's constitution had been long felt. Because of the fear on the part of the downstate counties that revision would curtail their power in the legislature, it had been difficult to bring about any change. All attempts at modification had failed until the businessmen of Wilmington demanded a general corporation law. This movement coupled with charges of chicanery respecting the role of members of the legislature in the granting of divorces finally brought enough pressure to force the calling of a convention. Before the convention convened, however, the downstaters were assured that no serious changes would be made in their legislative position. It is doubtful that unless this informal agreement had been reached there would have been a new constitution even in 1897.

ESSENTIAL PROVISIONS

Bill of Rights

The bill of rights, contained in Article I of the Constitution, has remained generally unaltered since 1792. Section 4, which provides for juries, was amended in 1931 by a provision respecting the size of grand juries in the several counties. The preamble affirms that political power comes from the people and that the institutions of government exist in order to advance the people's happiness. To attain this end the people may from time to time alter their constitution. The Bill of Rights guar-

* At first under the new law the State supreme court consisted of "left over" judges sitting in appeal. "Left over" judges were those members of the State judiciary (five law judges and chancellor) who had not heard the case originally. In 1951 a separate high tribunal was created. See Chapter 11 on the judiciary.

antees freedom of religion and of the press, but still says nothing about speech.* The usual procedural privileges are recognized, and freedom from unreasonable searches and seizures is provided. No commission of oyer and terminer is permitted, no bills of attainder may be enacted. The military of the State is at all times subordinate to the civil authority. No hereditary distinction can be granted, and no person holding any office under the State is permitted to accept office or title from a foreign potentate.

The Legislature

The provisions in Article II, which deals with the legislature, spell out in complete detail the legislative districts. They provide further for the election and qualifications of members of the General Assembly, state their salary, and contain several limitations upon the legislative power. Article VIII defines the taxing power of the legislature and restricts the spending power in certain respects. Article IX prohibits the General Assembly from granting individual corporation charters, and the legislature is specifically enjoined to provide for the revocation or forfeiture of corporate charters for the abuse, misuse, or nonuse of the powers contained therein. No general corporation law shall be enacted without the concurrence of two-thirds of all the members elected to each house. Article VI places the power of impeachment in the hands of the General Assembly.

The Executive and Administration

The provisions dealing with the executive branch in Article III delineate the plural executive form which Delaware has adopted. These provisions state the powers of the several state officers. County officials such as the coroners, sheriffs, clerks of court, are also provided for in this article. Article VII outlines the pardoning procedure. Article X establishes a free public school system and provides a supporting fund. Article XI provides for the administration of agricultural problems by establishing a state board of agriculture. Article XII is concerned with the administration and promotion of public health. Article XIII deals with liquor control through the medium of local option.

The Judiciary

Article IV contains the constitutional provisions for the arrangement of the judiciary and establishes the jurisdiction of the several state courts. Recent amendments providing for a separate supreme court have increased the already undue length of this article. If a completely new article had been drafted the space covered could have been reduced considerably.

* In view of the U. S. Supreme Court's findings in *Gitlow v New York*, 268 U. S. 652, freedom of speech at state level is guaranteed by the 14th amendment to the Federal Constitution.

Too much detail concerning the processes of litigation is included. If a re-thinking of the judicial process had been undertaken a well apportioned statement on the courts could have been written.

Elections

As in the case of the provisions concerning the judiciary the provisions in Article V relating to the elections contain too many minutiae, in spite of the care and effort that was made in the convention not to load the constitution with matters of legislative detail.¹ One section of this article goes into such detailed treatment for the handling of an election that the statute on the matter is practically a repetition of the constitutional provision. The section dealing with criminal prosecutions under the article is quite lengthy. It was written in such detail that the legislature found it to be an obstacle in attempting to write a statute covering absentee voting. Constitutional amendment was finally resorted to in order to effect the absentee ballot.

General Provisions

Article XIV prescribes the oath to be taken by public officials. Article XV is a catchall respecting such miscellaneous items as rules governing the holding of public office, printing of legislative stationery, and the right of a person not to be disqualified from holding public office because of sex.

Amendment and Revision

Article XVI provides for the amending of the constitution prescribing that amendment shall take place within the legislature by a two-thirds vote of all the members elected to each house at two successive regular sessions of the legislature with a general election intervening. There is no popular referendum of constitutional change in Delaware; the State is unique in this respect. There have been fourteen amendments since 1897.

It is further provided that a constitutional convention may be called after the legislature has submitted to the people the question of whether there shall be such a convention and the response has been in the affirmative. Such a convention would consist of forty-one members—one from each of the thirty-five representative districts in the state and two members at large from each county. No provision is made for submission of the revised draft to the people. The convention sits in a constituent capacity and promulgates the new constitution which it has created. The fact that changes in the basic law are not submitted for popular approval appears to be ingrained in Delaware constitutional procedure.

THE DELAWARE CONSTITUTIONAL SYSTEM

The Constitution and the Common Law

Delaware is one of the few states that has retained fairly intact the common law inherited from colonial days. The Constitution of 1897 attempted to replace some of the more outworn rules of the common law but in some instances ran into conflict with the thinking of some of the judges whose attachment to the ancient and long practiced rules was quite strong. For example, the Constitution of 1897 in Article 4, sec. 24, states that whenever a person appeals to the supreme court for a writ of error such appeal will not act as a stay upon the proceedings in a court below unless the appellant gives sufficient security to pay the condemnation money and all costs in case he fails to make good his plea. The old common law rule was ambiguous with respect to the placing of such security. The supreme court, however, in a case before it availed itself of the ambiguous common law rule and apparently rejected the specific injunction of the constitution.²

Until quite recently the courts have been loath to interfere with a common law rule even when a statute presumably enacted under a specific constitutional provision seemed to offset the rule. The courts have contended that the common law was inextricably woven into the governing process and was therefore to be considered part of the basic legal framework of the State. In fact there is evidence that a few of the judges felt the common law to be on a par with the constitution!³

Most judges, however, have made an effort to blend the common law rules and practices with the constitutional patterns. The result has been that the fundamental law of Delaware is really a mixture of the law received from earlier days and the judicial interpretation given to the constitution written by the people's representatives in assembled convention.

The Constitution as a Reflection of Localism

Perhaps the most outstanding feature of the several constitutions of Delaware has been the indelible impression made upon these documents by the intense localism that abounds in the State. In the very first constitution, that of 1776, there was a clear indication that Delaware, which was then called "The Delaware State," was really a collection of three counties. The name, "The Delaware State," was given this conglomeration of local areas in order to present an entity to the other states of the new nation. Governmental power, however, rested with the representatives from each of the counties. The General Assembly was the main-spring of government. It appointed the executive, who actually was nothing more than a presiding officer of the legislative body; it named the

judiciary and several of the administrative officers of the commonwealth. It had sole power to change the constitution, a right which it has retained with slight variation to the present.

The constitutions of 1792 and 1831, although placing greater authority in the governor and freeing some of the administrative officials from the immediate surveillance of the General Assembly, nevertheless left the bulk of governmental power with the legislature. Although the present constitution repudiates the theory that each county has legislative autonomy, it has placed a restriction upon real democratic representation by allocating to each "hundred," regardless of population, a seat in the legislature.* The hundreds are perhaps the oldest local units in the State with the exception of a few very early colonial towns. The majority of the hundreds are rural. Hence, there is a definite rural predominance in the law-making process.

Although the Constitution of Delaware places undue emphasis on the role of the local and rural community in government, this emphasis was, until the last ten or more years, an accurate reflection of the social and political situation in the State. The problem which the constitution presents to the politician and the lawmaker now is how to bring the basic law of the State into line with *present* political conceptions. As the movement away from an intense localism begins to gain headway, the constitution—unless it is amended—will tend to act as a brake upon political progress. There is a need, therefore, for some conscientious reappraisal of the elements making up the present fundamental pattern of government with a view to relating those elements to the basic understandings of modern society.

NOTES

¹ See *Debates in Constitutional Convention in Delaware, 1897* (Dover, 1897), IV, 2286 ff.

² See *Ownbey v Morgan's Executors*, 30 Del. 317.

³ *State v Foote*, 35 Del. 315 (1933).

* See *Debates . . . , 1897, op. cit.*, IV, 2414. The "hundreds" in Delaware are vestigial remains of ancient tax assessment districts. Their origin is lost in antiquity. They have at present no governmental authority.



CHAPTER 3

Popular Controls

POPULAR CONTROL of government in Delaware has not been effected primarily through the political party system. Rather, the force of public desire has been exerted by means of an intricate web of informal relationships between governed and governors. Without recognition of this cardinal fact a comprehension of politics in Delaware is almost impossible.

THE EFFECT OF LOCALISM

Until fairly recently Delaware has been a conglomeration of small towns and outlying places. No town or city in the State, with the exception of Wilmington, contained more than 5,000 persons until 1940. Even in that year only four communities outside of Wilmington could boast of having exceeded that number. For the most part the rural towns have been populated by persons who have resided in them all or the greater portion of their lives. From such tight-knit communities have come public men who are known personally to the people they serve. Representation in the legislature has been highly meaningful in such circumstances because complaints made by a constituent can be lodged directly and quite effectively with the representative. Legislators and other civil officers of the government have tended to bear a closer relationship to their constituencies than is the case in more populous states.

Although party is important in getting men elected to office, allegiance of the electee is basically to the local citizen body from which he comes. It is not the threat of defeat at the polls in a succeeding election which acts as a control over the representative. Often he knows he will not be re-nominated in any circumstance by his party because of the need for passing the office around the district. Rather, it is the knowledge that if he

votes for party promises which are contrary to the beliefs of the articulate elements with his constituency, he may be socially ostracized upon his return to private life.*

Another factor militating against party control over the course of public affairs is the love of county. To some degree the force of "countyism" is diminishing, but there is still enough of this feeling to present a formidable pressure among politicians. No legislator can wean himself completely from the fact that he is first from Kent or Sussex or New Castle, and then a member of his party.†

Closely allied with parochialism is the antipathy on the part of rural groups to those living in the metropolitan northern section of the state. This antipathy grows out of the clash of race, of nationality, and of culture. Wilmington represents a cultural pattern that is different from that found in the downstate areas. This difference has given rise in some instances to ideological splits that have transcended party lines. The Democratic Party of Kent and Sussex is not the Democratic Party of Wilmington and its environs. Although the Republicans do not face this internal split to the extent that the Democrats do, there is, nevertheless, a feeling of strangeness whenever a Republican from downstate meets his fellow party worker from the north. The major parties are faced with the need for making compromises among diverse groups. That the Democrats have to meet his problem to a greater degree than do the Republicans is but another manner of saying that the former is more in the nature of a coalition than is the latter party. In order to maintain contact with the various interest groups both parties have had to admit members from these groups into the high places within the party councils. Party leaders have tended to depend upon the interests to get out the vote. The Democrats are perhaps more dependent in this respect than are the Republicans, but there is much evidence that the Republicans rely upon men of wealth and upon the industrial and commercial interests of the State for the satisfaction of the party's pecuniary needs.

Although there seems to be a closer relationship between pressure groups and parties in the rural areas than there is in the urban sections of the State, pressure groups in Wilmington have taken on a more organizational aspect than these groups in the rural reaches. Organization has tended to

* Instance of this sort was cited the writer by a former member of the General Assembly who had been asked to introduce and support a bill governing the sale of fungicides. The bill had been recommended by his party, the intention being to place control of the sales of these materials within the State Board of Health and to allow only registered druggists to sell them. This member was a druggist, but he refused support because his constituency contained several feed merchants who were bitterly opposed to such a law. He did not want the local people to feel that "he had feathered his own nest."

† For a comment on the "clannish intimacy" of people in Sussex, see *Sussex Countian*, January 22, 1942.

deprive the interest group-party relationship of some of its personalism with the result that politics in New Castle County is conducted differently from the way it is in the south. Some of the feeling of antagonism existing between the upstate and downstate regions can be traced to this difference.

Variations in the social structure of the State make it necessary for the parties to act as coalitions when running state-wide candidates. These very coalitions help prevent the development of party responsibility. Downstate partisans are suspicious of party leadership, which of necessity plays for the support of the organized pressures of the north; their feeling abets the splintering tendencies of localism. Popular control of state government through the parties is thus rendered extremely difficult. The more recent history of the party system in Delaware lends support to this thesis.

PARTIES, A SHORT HISTORY

Some writers in the field of political history in Delaware have contended that parties existed in embryo among the early settlers of the "lower counties." While it is possible to see a slight thread running through the successive divisions of opinion that have occurred in political affairs of the State since its inception and to note the organization of these various opinions into two or more groups from time to time, it is a bit unrealistic to assume that the modern party system stems from these early days. The party system as it now operates in the First State can perhaps trace its beginnings to the split between Federalists and anti-Federalists in the first days of the Republic under the Constitution of 1787. Successive mutations through Democratic-Republicanism, Jacksonianism, and latter day Democracy can be said to have played a role in the formation of the present Democratic coalition. Likewise, with a somewhat greater stretching of the imagination, it is possible to discern a transfer from Federalism to Whiggism and then to Republicanism. Yet even with such connections evident in history it is difficult to hold that the Democrats and the Republicans of today are the counterparts of their predecessors.

The parties of the present are mass parties, are fairly well organized, and have as their chief function the selection and election of candidates. The parties of the nineteenth century essayed the role of defenders and proponents of fundamental issues. The Federalists in Delaware, as an example, opposed the extension of the suffrage to the mechanics and the small proprietors, contending that persons of wealth were best qualified to run the state. On the other hand the Jeffersonians (Democratic-Republicans) stood out for support of revolutionary republican principles and against the rule of the commercial aristocrats.

Although issues were embraced by the earlier Delaware parties, the parties were also used for the selection of candidates and the election of

them to office. Parties tended to be camps of leading citizens. We find the opposing parties consisting of outstanding men each of whom was capable of attracting voters because of personal popularity. In fact the rise of at least one major party in the nineteenth century can be attributed in part to the force of personality. The Whig Party in Delaware was largely the work of one man—John M. Clayton of Sussex County. Between 1829 and 1856 Mr. Clayton served almost continuously in the United States Senate. He was Secretary of State under President Taylor. During the period of Whig supremacy in the State (1830-1850) the party contained some of the most influential men of Delaware. The Du Ponts contributed handsomely to the Whigs without apparently asking any direct favors from that party.¹ Because the Whigs were the conservative political organization they generally received the approbation of the wealthy. The Whigs were noted for their platforms demanding a strong Union, solid banking structure, protective tariff, and the maintenance of smooth international relations. Support of conservative policies has always been the earmark of successful parties in the First State, and the end of Whiggism in Delaware came about largely because of its embracing abolition and prohibition, which were at that time highly radical causes.²

The origins of the present basis of party alignment appeared at the close of the Civil War. The continued conservatism of the State and the opposition to the extension of suffrage to the Negroes gave the Democratic Party its start in Delaware in the late 1860's. With the defeat of the South the Democratic Party in Delaware defended the *status quo ante bellum* respecting the relations between the black man and the white man. The Democrats were in power in the southern reaches of the State, and only the northern half of New Castle County could be considered Republican.

It was not until the rise of industry in the north that Republicanism began to gain a foothold throughout the State. Although many Republicans disapproved of Negro suffrage it was the Democratic Party that kept alive the anti-Negro feeling. It held itself out as the "white man's" party and invited all with such sentiments to join it. Had it not been for the overweening influence of business and industrial activity in the Wilmington area and the association of this enterprise with the Republican Party nationally, Republicanism probably would not have had the early success it did. Beginning in 1889 and making phenomenal strides thereafter, the new party advanced until it became the dominant party in the State which dominance lasted until the 1940's. Its growth was undoubtedly abetted by the defection of the Democratic Party to the Bryanites in 1896.

Wilmington and northern New Castle County became solidly Republican in the early part of the twentieth century, but the two southern counties continued to hanker after the old Democracy. Sussex became Republican by 1920. Kent remained loyal to the Democrats and it was not until the latter 1920's that it too began to fall into the Republican ranks. The elec-

tion of 1928 marked the climax of Republican triumph in the rural areas, but the sweeping success of the Republicans was short lived. In 1936 the State went Democratic, both for the governorship and the presidential electors, electing the first national Democratic ticket since 1912 and the first Democratic governor since 1897.

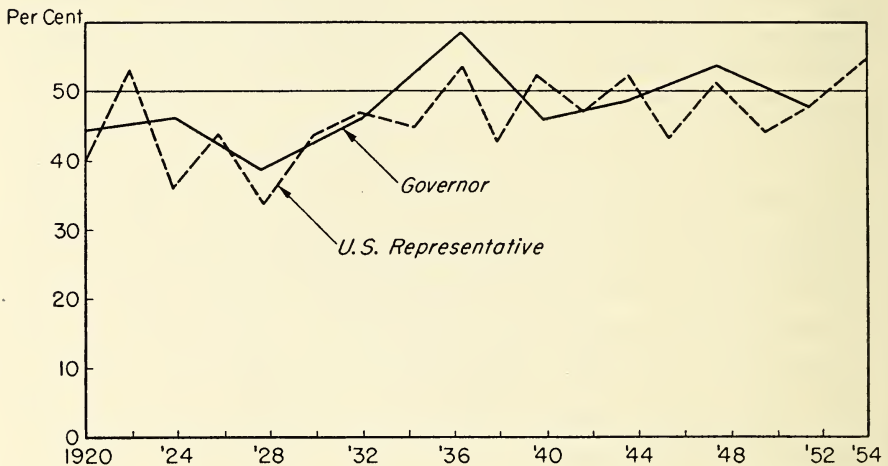
The story of the restoration of the Democratic Party to a position of equality if not dominance in the 1940's is the tale of social change in the State. Part of the story has already been told. In general it has followed the pattern found in many of the industrial states of the North and West. Large scale industry has brought numerous workers both skilled and unskilled to metropolitan Wilmington. At first these people came from the outlying rural areas near the city, but as the industries grew and more jobs were created a great wave of migration into the State began. Persons engaged in small truck farming in neighboring Pennsylvania and New Jersey, finding good paying jobs changed their basic pursuits and became industrial workers. Many of these people became residents of the State. The farm land surrounding the city of Wilmington began to be built up first with modest one story homes located mostly along the highways and side-roads. Later housing developments "out in the country" began to appear, and large suburban apartment houses with their own sanitation systems, central heating, and water facilities were built. Into these dwelling places poured literally thousands of people until in 1950 the population in the entire State soared to over 318,000 from the 202,000 of 1910. In 1950 Delaware was the seventh fastest growing state in the Nation. For electoral purposes this meant there were over 220,000 persons of voting age, 150,000 of whom were in New Castle County; thus the potential vote in this one county alone is greater than the total number of votes ever cast in an election in Delaware before 1940.

The bulk of these newcomers are urbanized industrial workers. Gone is the distinctive rural character of the State. Instead of the mass of population being enclosed in small towns and villages or small suburban communities, Delawareans in the main are now to be found in the metropolitan area of New Castle County.

The social and economic changes that have occurred in the northern section of the State have put the party coalitions to a severe test. The question that looms immediately is whether the development of mass voting in the upper New Castle area will permit the continuance of uneasy agreement among county factions within the parties. Can the Democrats, for example, allow their downstate adherents to continue to buck the public demands impinging upon their party in the northern metropolitan area? If the bulk of the Democratic strength is to be found in this more populous section and the party chiefs turn more and more to the satisfying of the demands of this group, what will happen to the Democratic vote in the southern counties? Will it turn Republican, and if so, what will happen to

Republican support accruing from some of the under-privileged groups in Wilmington? Obviously the Republicans cannot afford to become a distinctly rural and upper class party if they wish to regain power in the State. The Democrats on the other hand will find themselves continuously out of power in the legislature if they throw their lot in with the urban elements. The anomaly of a Democratic governor being faced by a Republican legislature would be Delaware's constant situation, and party responsibility would be an impossibility.

The two major parties must draw closer to the middle of the road and seek their support from the same general groups. To do this, both groups must remain moderate and avoid extremism. This will mean that elections will become largely personality contests, with the candidates of both parties supplying strong personal appeal.



DEMOCRATIC VOTE FOR GOVERNOR (STATE) AND U. S. REPRESENTATIVE
(NEW CASTLE COUNTY), 1920-1954

The possibility, of course, is that the Democratic Party will make its strongest bid to the mass of the northern electorate of the State and will run the risk of losing legislative control, but by so doing they will force Republicans out of the governorship, the line offices, and the federal elective posts. This may mean that the legislature will refuse to lend its support to the satisfaction of public needs in the metropolitan area. In such a situation the urban northern area may become less tolerant of rural intransigence with the result that the urban-rural clash will become sharper.

At present there are many Wilmingtonians, particularly among the propertied classes, who make common cause with downstaters. On the other hand, there are elements among the rural population who vote in the same party as do the city worker class. If the legislature does not reflect the neat balances of these political alliances, there is a strong possibility

that the rising industrial urban groups will organize more firmly and make certain they capture the state-wide offices. If matters come to such a pass the result can be a mass frustration boding nothing but ill to the political fortunes of the First State.

PARTY ORGANIZATION

At the Local Level

At the base of the party system in Delaware is the election district. The number of election districts is determined by the Department of Elections in the county. In 1954 there were 329 districts in the entire state. These correspond roughly to what is commonly called a precinct.

Among the Republicans in rural New Castle County the election district committee consists of six persons, three men and three women. In Kent and Sussex there are two persons from each district. From each of the 151 districts in Wilmington there are two members. All these persons are elected by the members of the party voting at a primary election held every two years in each of the districts. In the great majority of cases the election is perfunctory, and the committeemen are returned again and again. In rural New Castle the election districts are combined into what is called a hundred. Each hundred has a committee composed of the committee chairmen of the election districts. The hundred committee chooses its chairman from among this group.

The Republican organization in Wilmington is known as the First District Committee. Two persons, one man and one woman, make up each election district committee. The committee members from each district in a ward serve on the ward committee, and elect a ward chairman. The ward committees make up the First District Committee (which is really the city committee). Its chairman is technically "elected by the entire membership of the First District Committee," but in reality he is "designated" by the policy committee of the state party with the state chairman usually having a strong voice in the selection. In Kent and Sussex the election districts are combined into what are called senatorial districts, each with its committee made up of the chairmen of the election districts.

Among the Democrats the election district is again the basic unit in local organization. In rural New Castle each election district sends two persons to the hundred committee, which selects its own chairman. In Kent and Sussex the election district members are combined into senatorial district committees as among the Republicans.

The City of Wilmington has its ward committees among the Democrats as among the Republicans. The Democratic City Committee is composed of all the members from all the election districts in the city; it is an unwieldy body of over 300 persons. The power in this committee, however,

rests with the ward chairmen and the leaders of the New Castle County Committee. The city chairman is "elected", by roll call of the city committee after he has received the "nod" from the state policy committee.

County Committees

Organization of parties in Delaware occurs primarily at the county level. Parties, according to law, are organizations of 500 bona fide citizens and voters of any county in the State.³ The clerk of the peace in the county may, if he has doubt as to the sufficiency of the number, demand a certificate containing the signatures and addresses of 250 voters belonging to such organization. The only other limitation is that "no party shall receive a place on the ballot if it advocates or carries on a program of sedition or of treason by radio, speech, or press of local, state or national government in the United States."⁴ In case there is a fractional split within a party in a county, the clerk of the peace determines which faction is to carry the party emblem on the ballot.

Although the major parties are organized at the county level, each also maintains a state organization. The state committees, which head the formal state organization, are, however, loose confederations. The following is the scheme of county organization employed by the Republicans:

Each county has a county committee. In New Castle this committee consists of nearly 1,000 persons. Kent and Sussex have less than fifty members each. Members are theoretically chosen by the voters of the party at primary elections, but in reality they receive their positions from the county chairmen or the leaders of their local districts.

New Castle County is divided for organizational purposes into hundreds and these in turn into election districts, the latter corresponding to the precinct. In Kent and Sussex the organization is made up of representative districts and these in turn broken down into election districts. In New Castle there are 151 election districts in Wilmington and 128 in the remainder of the county. Kent has twenty-four districts and Sussex has twenty-six. Two persons, a man and woman, act as the district committee in the Wilmington organization, and six persons, three men and three women, serve on each of the district committees in the rest of New Castle. The New Castle County Committee consists of all these persons. Likewise, all election district committees (each of which consists of two persons) in Kent make up the county committee there. The same formula is used in Sussex. Because of the great number serving on the New Castle County Committee there is an Executive Committee consisting of fifty members who serve in policy making capacity. Although there is no executive committee in Kent or Sussex under existing rules, each county has an informal policy group that acts in that capacity. There is also an informal group that helps the New Castle executive committee come to decisions.

In the Democratic organization each county has its own committee, but

Wilmington is treated in a separate category with respect to New Castle County as is the case with the Republicans. The New Castle County Democrats have an executive committee consisting of 267 members made up of two from each of the 128 election districts outside of Wilmington and ten from Wilmington city plus the city chairman.

Kent County also has a committee known as the Democratic Executive Committee of Kent County. It contains two members from each of the twenty-four election districts in that county except in the case of one district which sends four members, the total being fifty. Sussex likewise has an executive committee consisting of two members from each of the twenty-six election districts in that county and the chairman and secretary, making a total of fifty-four persons. The county chairman is chosen in each case by the county committee.

Although county organizational charts place top leadership in the county committees, real control in the county usually rests with a few individuals. Generally the county chairman is a member of this group.

State Committees

In addition to the county committees there is a state committee in each party organization. The Republican committee consists of eight persons from each of the convention districts* chosen in the district caucuses at the beginning of the state convention. Final approval of the state committee is made by the entire state convention. In addition to the members so selected the chairman and vice-chairman of each convention district also serve on the state committee. The state committee elects the state chairman and vice-chairman neither of whom must be members of the committee before being elected.

Because of the unwieldy nature of the state committee an informal policy group has been established in order to provide liaison among the several county organizations and to make top policy decisions. This policy committee consists of approximately fifteen persons, one of whom is the national committeeman. Its chief function is to provide over-all strategy for the nomination of candidates and for their election. Whenever top level policy is called for, this group is the one that makes the decisions. It also serves as a medium for the allocation of party funds through the counties. The policy group contains representatives from each of the counties and from the city of Wilmington; however, the major portion of its membership comes from New Castle County including the City of Wilmington. Selection of the state chairman depends mostly upon the wishes of the committee.

* The Republicans divide the State into four "Convention Districts." The first is the City of Wilmington; the second, rural New Castle; the third, Kent; and the fourth, Sussex. The New Castle County Republican Committee is actually made up of two groups: one, the First District Committee and the other, the Second District Committee.

The Democratic State Committee is composed of fifty-two elected members made up of two from each of the seventeen senatorial districts of the State plus six persons at large from each county. In addition, there are fourteen ex officio members including the national committeeman. The state committee chooses the state chairman.

Like its Republican counterpart the Democratic state committee constitutes an unwieldy group for deliberation and decision making. Accordingly, a smaller organization, known as the state policy committee, has been formed. This committee consists of the governor, the lieutenant governor (or the unsuccessful candidates for those offices), the national committeeman, the three county chairmen, and the Wilmington city chairman, plus other influential members of the party chosen by this group.

Control in both parties rests with the leaders forming the inner core of the party organizations in each of the three counties and in Wilmington. Although the Republicans make an effort to distribute the membership of their policy group evenly throughout the State, they tend to concentrate power within the city of Wilmington.

NOMINATIONS

The Primary

The primary is used in Delaware to select: (1) county officials, (2) members of the state legislature, (3) certain municipal officers, and (4) delegates to the state conventions. In each instance, however, the primary election is mostly perfunctory. Only a small minority of the electorate vote in a primary even when there is a contest. The primary is a party affair. To vote in a primary, one must be registered in a major party prior to the date of the primary. The primary is used by both major parties as means for formally selecting candidates who have been agreed upon by the respective party leadership before the primary is held. One can stand in a primary by merely notifying the county committee of the political party of which he is a member, in writing at least fifteen days before the primary election is held. Filing fees required of a candidate who wishes to run, particularly for the more important county offices, make it very unlikely that a person will enter a primary contest without first gaining the nod of the party organization.* On the general average 20 per cent of the legislative posts are contested at the primaries. Many persons may express a desire to run for nomination and may even file, but as the deadline for withdrawal from the primary approaches, the drop outs are extremely great. One reason for this is that the filing fees are returnable up to a certain date. Another reason, and perhaps more potent, is that insistence upon making a primary race in face of organizational advice may

* The fees range from \$50 to \$1,000 for several offices at county level.

result in severe displeasure on the part of the organization, which may take the form of ticket cutting in the ensuing general election if the non-organization candidate is successful in the primary.*

Primary elections are held on the third Saturday in August. The polls are open from 7 A.M. to 8 P.M. Electoral interest is usually at an extremely low ebb when the primaries are held, and this fact works to the advantage of the regular party organizations.

The State Convention

The state convention has been retained by Delaware for the selection of candidates for the governorship, the regular line offices, and the membership in Congress.† The delegates to the national conventions are also chosen by state conventions meeting once every four years; the latter are known as the "little" conventions. Membership in the state conventions differs with the two major parties. For the Republicans there are 160 members chosen from the four convention districts. The First Convention District, Wilmington, sends forty members, rural New Castle, which is the Second District, sends thirty-eight; Kent, the Third District, has forty; and Sussex, the Fourth, has forty-two.

The Democrats have 210 members in their state conventions. Sixty come from Kent, sixty from Sussex, sixty from rural New Castle, and thirty from the city of Wilmington. Thus the delegate strength in the Democratic conventions is definitely located in the southern counties, while that of the Republicans tends to be evenly balanced between New Castle and down-state.

Both the Republican and the Democratic conventions are really holding companies for the county or convention district caucuses. Each convention district in the Republican convention and each county delegation among the Democrats caucuses separately and decides upon whom it will support for the state offices allotted to that district or county.‡ When the report of a particular caucus is received on the convention floor the convention then proceeds to nominate the person recommended for a particular office. This system is known as "abiding by the caucus." It is an earnest of the intense countyism that prevails in Delaware. Sometimes unanimity cannot be achieved in a caucus and the differences are carried to the floor of the convention.

In the "little" conventions when nominating to the positions of delegate

* If a candidate who has been selected at a primary withdraws before the election, the place on the ticket can be filled by appointment by the county chairman.

† The convention is recognized in the State constitution. Art. V, secs. 7, 9.

‡ According to an unwritten rule in both parties each county gets its "turn" in naming the candidate for a particular state office. For example, if Kent nominated the governor this year, then it would be Sussex or New Castle's turn next. Also the ticket is "balanced" among the counties. The governor from one county, the lieutenant governor from another, the U. S. Senator from another.

to the national convention the caucus rule is also followed.* Sometimes here again fights within a caucus will be forced on to the floor.

In addition to the influence of the county caucus upon the deliberations of the convention the influence of the policy committee must be taken into account. Much of the work of the convention of either party is cut out for it before its meeting. Although the caucuses are often "dictated" by the party leadership of the county from which they come, the policy committees of the respective parties attempt to achieve a semblance of harmony within the party. Nothing could be more disturbing to this harmony than a fight on the convention floor. Smoothness and cooperation are the key words of the party chiefs. To achieve the appearance of unity in the party all elements of disruption must be dissipated. This can only be done by close-hauled working relationships among the party leaders. Every effort is bent therefore toward the balancing of the varied interests represented within the convention before the convention gets underway, and this is the job of the policy committee.

Besides nominating to public office the state convention formally selects the state committee. Here again, however, the privilege of recommending names for approval rotates among the counties or convention districts. The convention proceeds to confirm the recommendations. The national committeeman and committeewoman are named by the "little" conventions. Again the action is upon the recommendation of the party leadership as expressed through the policy committee.

As long as Delaware retains its county based party system it will be extremely difficult to achieve a state-wide primary system of election.† The state conventions are nothing more than formal clearing houses for ratifying the choices of the party organizations in the counties. In order to institute a state-wide system for the selection of the line officers, the downstate counties would have to be willing to give up their prerogatives of "rotation" which at present determine the ultimate choice of party nominees and to permit democratic selection at a state-wide primary. As long as the county retains its party autonomy there can be no such thing as a state-wide party system.

There is no political institution in the State that has done as much to prevent the rise of a responsible party system as has the state convention. Based upon the fact of county autonomy in the party organization, the state convention is nothing but a holding company subject to the wills of the county chieftains.

* The convention may endorse a presidential candidate and it may instruct the delegation.

† Proposal for a state-wide primary for selection of candidates for the governorship, other state constitutional offices, the U.S. senatorship and the office of U.S. Representative was made in 1955. It passed the Senate but as of this date no action has been taken in the House. See *Wilmington News*, August 3, 1955.

SUFFRAGE AND ELECTIONS

Qualifications for Voting

Eligibility for voting in Delaware is spelled out in the constitution. Subject to the limitations of the Federal law on the suffrage, the state constitution declares that every citizen of the State who is over twenty-one years of age and who has been a resident thereof one year next preceding an election and for the last three months a resident of the county and for the last thirty days a resident of the hundred or the election district in which he may offer to vote may, if duly registered, exercise his electoral choice. In addition to the above requirements one must be able to read the state constitution in the English language and to write his or her name if physically capable. Troops garrisoned in Delaware do not obtain state residence and are not eligible to vote. No idiot or insane person, pauper, or person convicted of a crime deemed by law a felony has the right of election. The legislature may withdraw the right of suffrage as punishment for crime. No person accepting or receiving a bribe in connection with the delivery of his vote shall upon proper challenge be permitted to cast a vote. It is of interest to note that a person convicted of bribery in connection with elections is rendered incapable of voting for a period of ten years following such conviction.

The qualifications of voters in a primary election are established by the political party either by direct prescription or by the past usages of the party. No person may vote in a primary unless he is duly registered to vote in a general election and has expressed his party allegiance.

Registration

In 1955 Delaware reestablished the permanent registration system. Registration is usually made in person, but certain classes of persons are permitted to register by mail, following a procedure laid down in the statute. Supplementary registrations are held every two years. The State election commission furnishes the necessary registration records and supplies for the use of the departments of elections in each of the three counties. The compensation of the registrars is borne by the State, but all other expenses in connection with registration are met by the respective counties.

If a registrant has not voted in the two preceding general elections, then at the expiration of the fourth year his name is removed from the list of qualified voters, but the Department of Election in the county must give notice of such removal to the voter by registered mail before the removal is effective. He has the privilege of re-registering.

There is a provision in the present registration law making it easy to change one's name from one district list to another within a county, but

in spite of this the increased mobility in the population in the northern area of the State has tended to lessen the ratio of registered voters to total population in this area. In order to maintain the relatively high participation of voters in Delaware it will be necessary for greater party organization aimed at keeping persons on the lists and seeing that they vote in the general elections. The present system of registration will probably work to the advantage of the rural areas inasmuch as the "floating" population of northern New Castle County will find it difficult to keep their names on the lists.

Neither major party has ever advocated placing the responsibility for registration upon the State as is the practice in Great Britain. Instead of making the registration officials canvass the dwellers in a given district and then publishing the lists of eligible voters some three weeks or a month before election, the burden of registration is placed directly upon the voter.

Absentee registration is permitted although the privilege is limited to servicemen, members of the merchant marine, others connected in ancillary capacity with the military service (such as the Red Cross), and those physically incapacitated.

Electoral Machinery

The electoral machinery employed in Delaware prior to 1953 left much to be desired. The procedures aided electoral skullduggery of the worst order. Permanent registration without the proper enforcement of the provisions for clearing out deadwood permitted the manipulation of voting lists to the point where the Federal Government was forced to intervene.* Another primitive practice was the use of paper ballots. Not only was the form of ballot conducive to fraud but the fact that five ballots were printed for every eligible voter made fraudulent voting almost a foregone conclusion. Ballots were distributed to the chairmen of both major parties a few days prior to the election, and these ballots could be marked at home and placed in the ballot boxes on election day.

The irritation arising from the voting arrangements led to a movement on the part of several civic bodies to force changes in the electoral machinery.† Accordingly, in 1953, after both parties had campaigned for ballot reform, the legislature passed a law requiring the use of the voting machine. The use of the voting machine will not in itself end all of the problems that are currently associated with the exercise of the franchise in Delaware. The personnel at the voting place are picked by the Department

* During one investigation of charges of fraud in the handling of the voting lists the Federal circuit court in Philadelphia was led to remark that Delaware elections and registration seemed "peculiar." The court wanted to know if it were customary to vote more people "than exist down there." *Wilmington Journal-Every-Evening*, February 20, 1942.

† See speech of the Hon. James M. Tunnell, Jr., Associated Justice of the Delaware Supreme Court delivered Dec. 1, 1952. Published by the Delaware Day Commission.

of Election upon recommendation of the major party organizations. Competence has not been one of the foremost qualifications for service at the polls. As long as the county conducts elections little can be done at state level to eliminate ballot fraud. Yet the state authorities have been working slowly toward the purification of the franchise. The four-year registration, the voting machine law, and the recent enactment of a forthright absentee ballot law are all movements in this direction. Prior to 1944 the State constitution prohibited the absentee ballot.⁵ As a result of the extensive demand that servicemen away from home be permitted to vote the constitution was amended. The legislature did not go beyond giving the soldier the use of the ballot. Other persons who happened to be absent from the State on election day could not vote. Finally, in 1952 both parties demanded a forthright absentee ballot that could be used by anyone whose occupation or physical incapacity prevented him from being present at the polls. Now, by following proper procedure under the guidance of the Department of Elections a qualified voter may cast his ballot in the county of his residence by mailing it to the clerk of elections within thirty days before the election.

Electoral Behavior

Delaware ranks high among the states in the percentage of registered voters casting ballots in presidential elections. In 1948 it was third highest in the country, with 71 per cent.* In 1952, 79.1 per cent of those registered voted.⁶ In the off year elections, however, the percentage falls off considerably with less than 50 per cent of those registered actually exercising the franchise. Perhaps the most important reason for the relatively high degree of voter participation in Delaware is the comparatively equal strength of the two major parties. Since 1920, the Democrats and the Republicans have been sharing the total vote rather evenly, with first one party and then the other in the ascendancy. The Republicans have held the edge, but it has been a tenuous edge at best.

The social and economic differences between the northern and southern sections of the State have helped bring out great voter participation when rival candidates from different sections appear on the parties' lists. Percentage of voting downstate is also enhanced by the tendency on the part of the rural citizenry to regard their electoral duties as part of the social pleasure. "Return Day" in Georgetown, in Sussex County where the old custom of returning all the ballot boxes from the outlying sections of the county to the county seat is still celebrated, is actually a holiday for the rural folk. Electioneering in the downstate counties still smacks of the

* The ratio of voters to the white population was higher in Delaware between 1792 and 1800 than in any other state according to a student of early political activity in the U.S. See Leutscher, G. D., *Early Political Machinery in the U.S.*, (Phila., 1902), p. 25.

carnival atmosphere of transparencies and torch light parades. Political caravans tour the countryside.

Although no thorough study has as yet been made of voter participation in Delaware it would appear that a very high percentage of voting occurs in those districts in which the white collar worker and professional person reside. These classes are concentrated in the northern radial hundreds. In recent years there have been heavy turnouts in the areas where the organized laboring classes live. Negro voting has been gaining recently, and in the last two presidential elections the turnout of Negro voters was exceeding high in relation to that of the whites. Urban Negroes tend to vote in greater proportion than do those living in the downstate areas.

OTHER MEANS OF POPULAR CONTROL

Popular control over government in Delaware is not effected through a responsible party system. Being based upon the county with little over-all coordination, the party does not afford a ready means of transferring popular demand into law. In fact, the party and electoral arrangements tend to prevent the absorption of popular feeling into the political process. The permanent gerrymander in the legislature retards the marshalling of democratic power in the populous areas of the State. Until this defect is remedied, popular control over public affairs will have to seek means other than party and elections for its expression.

Chief among the vehicles for the exercise of indirect political control are the mass communication agencies of the State. One of the oldest devices for the formation of public opinion in Delaware is the newspaper press. The newspapers of the State consist of the two large Wilmington dailies—the morning *News* and the *Journal-Every-Evening*—and over thirty weeklies published in the towns, particularly downstate. The Wilmington daily papers have a circulation of 100,000. They afford broad coverage of political happenings, and their editorial pages comment constantly upon political affairs in both the Nation and the State. They are Republican.

Although no paper is ever very critical of the general social or moral tone of the State, the downstate papers are apt to be outspoken in their criticism of the northern metropolitan areas, and one of them—the *Sussex Countian*—is often quite pointed in its remarks. Most of the weeklies, however, are local legal notice and social affairs papers, and do not have the wit or the desire to engage in partisan controversy or to take strong sides in political questions.

In addition to the newspapers there are several radio stations and one television broadcasting unit. WDEL, WILM, WAMS, and WTUX serve Wilmington, and most of these stations can be heard downstate. WDOV in Dover is the most centrally located, but its reception is not great. WPFH-TV, the only television station in the State, is a fairly strong sender

and can be received clearly within a forty mile radius. The programs of the radio and television stations include general topics and world-wide and national news items. Also, great effort is made by these broadcasting companies to present information of state-wide interest. Agricultural programs are handled regularly, and matters of local interest absorb much of the broadcast time.

The most effective factor, however, in the exercise of popular control over government in Delaware has been the smallness of the State both in size and population. This circumstance has permitted close inter-personal relationships to develop between the government and governed groups. These relationships have acted as a check upon excesss within the officialdom. As long as the population was relatively small and there was the resulting ease of communication, the face-to-face approach of citizen and official to public affairs advanced democratic control over government. With the increase in size and complexity of the society, however, serious question has arisen whether there is some other means for insuring accountability of the governing class to the people.

NOTES

¹ Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), I, 153.

² *Ibid.* I, 159-60.

³ *Revised Code of Delaware* (1953), Title 15, sec. 4101.

⁴ *Revised Code of Delaware* (1953), Title 15, sec. 4101.

⁵ See *State v Lyons*, 40 Del. 77 (1939).

⁶ *Wilmington News*, February 20, 1953.



CHAPTER 4

Legislative Organization

THE LEGISLATIVE POWER in Delaware rests with the General Assembly. The General Assembly is a bicameral body consisting of a senate and a house of representatives. The legislature is perhaps the most powerful political institution in the state of Delaware.¹ Not only does it have the authority to make laws but it also has the sole authority to amend the state's constitution.

Although in recent years there has been a tendency on the part of the executive to curb the strength of the General Assembly, that body has remained extremely powerful. There are several reasons for legislative supremacy, but chief among them is the fact that historically the Delaware legislature has been the forum in which the political struggles of the State have been resolved. As early as 1704 when the lower counties were still under the proprietorship of William Penn, representatives of the freemen in those counties met apart from the representatives in Pennsylvania. The only executive control over their actions was that feebly exercised by Penn's deputy, who made it a point to leave the lower countymen to themselves. This assembly had the power, subject to a cursory surveillance by the Pennsylvania governor, to make the laws for these counties. The Revolution cut the last formal thread connecting them with Penn's commonwealth, and in 1776 a convention was called for the purpose of casting a frame of government for The Delaware State. The constitution thus framed provided for a General Assembly but no governor. The legislature elected a president, whose chief duty was to preside as a formal functionary over the legislature. He had no veto over its acts.*

* No president was chosen by the Assembly until February 1777. When named, he was promptly captured by the British, and his successor was not elected until March of the following year.

It was not until 1792 that a governor was provided for in the State's fundamental law. Thus in early statehood Delaware depended upon the legislative branch to act as the symbol of its competency.

Another reason for legislative supremacy is the fact that the counties have insisted upon equal power in the conduct of public affairs. In order to accommodate this demand, the legislature has retained a close control over the exercise of public power, both legislatively and administratively. The representatives from each county quite often regard their positions as those of ambassadors meeting in common council for the express purpose of maintaining a careful check upon the operations of the state government as if it were a foreign power bent on enslaving the local citizenry. This attitude has produced a legislature that is unique. No firm grasp of government in Delaware, particularly of its legislative aspects, can be gained without first acquiring some knowledge of the structure and operation of its General Assembly.

REPRESENTATIVE CHARACTER

Legislative Apportionment

Bicameralism in Delaware is largely a reflection of the custom among most of the early states to have this type of legislature. Because of the intense "countyism" prevailing in the State there could be no popular basis for representation. Although two houses were called for in the Constitution of the Delaware State in 1776, each was based on county equality. The House of Assembly consisted of seven representatives from each of the three counties and the Council, or upper house, consisted of three members from each of the counties.

In 1792, upon the occasion of the first revision in the fundamental law, the legislature was again composed of two houses, a senate and a house of representatives. The former was to remain at three members from each county, and the latter was again to contain 21 members, seven from each county, but there was a proviso that by a two-thirds vote in both houses there could be an increase in the membership. Provided, further, however, that the senate should never be more than one-half nor less than one-third the membership of the House.² These same provisions were retained in the revision of 1831.

The constitution that was enacted in 1897 did away with complete equality of representation among the counties in that it gave to the city of Wilmington, situated in New Castle County, an additional two members in the Senate (setting the number from Kent and Sussex at five each, with rural New Castle also having five members) and gave five representatives to Wilmington with ten coming from each of the lower counties and from

rural New Castle. Thus there are seventeen members in the Senate and thirty-five members in the House of Representatives.

Bicameralism in Delaware has not resulted in placing representation on a populational basis in the House. Rather, both Senate and House represent areas, that is, they are geographically based. The only difference being that twice as many members serve in the House as do in the Senate. The basis of representation in both instances is the same. For example, Wilmington with 110,000 people has five representatives and two senators. Appoquinimink and Blackbird Hundreds with a combined population of 4,000 persons, have one representative each and one senator between them.

The apportionment of membership in both houses is determined by the constitution not only as to numbers coming from each county but also as to the specific localities to be used as basis for that apportionment. Over half of the wordage in Article II, which treats of the legislature, is concerned with the delineation of the territories from which representatives and senators are to come. The usual basis is the hundred (see Chapter 2 page 24). In the rural portion of New Castle County the representative districts coincide with the hundreds in that county. Three of the representative districts in Kent are based exactly on three of the hundreds in that county, and in Sussex eight out of the ten districts coincide with the boundaries of the hundreds in that county. The remaining representative districts cut across the hundred lines. Senatorial districts are usually made up of two representative districts.

The constitution has placed the indelible stamp of county control upon the legislative process. As early as 1853, James A. Bayard, one of the members of a distinguished family in the State, attempted to break down "county jealousies" by having members of the House and Senate elected from districts that would be redistricted at each decennial census on the basis of equality in population.³ Bayard wanted to destroy the political autonomy of the counties and make them merely administrative units for purposes of local government.⁴ He was met on the floor of the convention by the rejoinder from a member from Kent who stated he was not willing "that they (the delegates from New Castle County) shall come down here and tell us we must district Kent and Sussex according to their wishes. I want them to let us alone. We can get along very well with our own affairs."⁵

In 1897 upon the occasion of the most recent revision of the fundamental law an effort was made by some of the Wilmington representatives to gain equitable representation for the city in the legislature. This attempt was rebuffed forcibly by the downstaters with the remark that "it is the precedents and traditions that have made our State what it is (!), that have made us all so much attached to it, and [we] are not willing to do anything that will put them in jeopardy or break them down."⁶

As late as 1941 an outstanding citizen of a downstate area stated that

"city populations are not all permanent and abiding [nor do they have] the abiding loyalty to State and local affairs that is inherent in ones to 'the manor born.'" ⁷ This same antagonism toward the city was voiced in 1949 by a Sussex County senator in a charge that the then governor, Elbert N. Carvel (who resides in that county) was trying to set up a "Wilmington machine" when he advocated increased representation for that city.⁸

Consistently over the past one hundred years any effort made to bring about a rearrangement of the apportionment in either house so that the more populous areas of the state would receive greater representation has met with steady opposition by the rural citizens. In light of this fact it is important to explore briefly the legislative situation as it affects the basic rural-urban clash in Delaware.

Before discussing the sociological aspects of the question it is important to recall certain political facts that were outlined in Chapter 3. Party control in Delaware lies at county level. In both parties the political control in the city of Wilmington is tied in closely with that in New Castle County. The Republicans provided for some semblance of organizational autonomy in Wilmington when they created the First and Second Convention Districts. The Democrats have not gone so far. Wilmington technically is within the purview of their New Castle County Democratic organization. The county chairman in either party, however, is higher within the party hierarchy than the city chairman. In the Republican state convention, where party policy is formally determined, the city of Wilmington comprising the First Convention District has only as many votes as rural New Castle. In the case of the Democrats, Wilmington has only half as many delegates as the rural New Castle area. It is difficult to conceive of legislative reapportionment taking place on a population basis unless it is preceded by a realignment of areal representation in the party organizations. Legislative apportionment reflects the fact that party organization is county based. To speak of changing the former without first revamping the latter is to be completely unrealistic.

As to the sociological differences, often cited by visiting scholars who take a quick look at Delaware's social structure, it is important to note that not all the people in the city of Wilmington are in favor of giving Wilmington a greater portion of the legislative representation. Many of those who are against such a move are very articulate in their opposition. This fact is verified by the continued failure of most Wilmington representatives to support proposals to change the apportionment. Many of the old aristocratic elements mentioned in Chapter 1 are to be found among politically minded members of old-line families long powerful in city as well as state politics. They do not look favorably upon a distribution of their prerogatives among the rising industrial working classes. Wilmington's population, which makes up some 30 per cent of the entire

state population, still reflects much of the localism that pervade the other areas of Delaware.

Legislative Personnel and Turnover

Delaware unlike some of its small-state counterparts does not have a large number of legislators. The House of Representatives is the smallest in the Union. The Senate is matched by that of Nevada.

Fifty-two legislators, divided into two groups of thirty-five (the House) and seventeen (the Senate), are extremely conspicuous in the general population. Not only is the individual representative or senator known by his own constituency, but he likewise is recognizable in other sections of the State. Floor and committee action of the assembly is covered quite thoroughly by the Wilmington papers, which have wide circulation throughout the State, and inasmuch as the total number of legislators is quite small, all legislative activity is discussed by the radio and the press in terms of the individuals sponsoring the action. This situation is made possible of course because of the extremely small size of the State, and the fact that the number of legislators is also small. Close personal relationships between lawmakers and the general population mark Delaware citizenry. The legislative halls reflect this cardinal fact of government in the First State.

It is extremely rare to find a member of the legislature who feels he is representing the people of the entire State. His primary and almost sole allegiance is to his constituency and to his county, particularly in the rural areas. The county organization of parties in Delaware fosters this attitude, but its source is found in the fact that people feel they belong to a certain small area of land in which they find their kinfolk, their friends, and their neighbors. One member of a locality is considered no more gifted than the next to represent the interest of the community. To some extent this fact is responsible for the high rate of turnover among Delaware lawmakers. The local hundred usually consists of two or more smaller communities, each about equal in population to one another. Each of these will therefore insist that it be given the representative from the hundred or district in rotation, and it is this situation that helps bring about a constant stream of new faces in succeeding legislatures.*

In addition to the peculiarities of the local political situation being largely responsible for the turnover among Delaware legislators there is another reason, which often escapes casual observation. It is closely related to the fact that members of the legislature are workaday citizens of their communities. Attendance at legislative sessions takes up too much

* The Senate reflects this situation to a greater extent because each senatorial seat, being made up of at least two representative districts, must not be filled continuously from the same representative district. Democratic Party rules cover this point quite thoroughly. See *Rules for the Government of the Democratic County Executive Committee of New Castle County*, p. 5.

of a man's time. The local farmer finds it impossible to continue to give over five or six months every two years to lawmaking. With sessions beginning in January and running through to June the planting season is passed by the time the man engaged in agricultural pursuits can get back to his farm. For the local businessman or lawyer it is a direct hardship financially to be absent from his office one-third of every other year. Legislative salaries of \$1,000 annually are a pittance and little compensation for the loss involved. Consequently few men desire to be reelected.

There is also the feeling among many legislators that their efforts in Dover are wasted. Frustration is constantly present. Several former members have gone on record against the small accomplishment that accompanies legislative activity.⁹ Lack of adequate working space and proper assistance in the legislative halls have turned men away from seeking reelection. Yet in spite of these conditions Delaware has had several legislators who have served four or more successive terms either in House or Senate. Recently there seems to be a tendency toward reelection. Between 1937 and 1941 the percentage of turnover in the House was 85, in the Senate close to 50. Between 1941 and 1949 the House figure had dropped to 82 per cent and the Senate was 44 per cent. The percentage for the House in 1951 was 77 per cent.

In spite of the high turnover, the Delaware General Assembly has attracted relatively able men to it. Contrary to the expectations of some, lawyers do not bulk large in Delaware legislature. In the 1949 session only two members were attorneys. Ten were independent businessmen, all with fairly successful enterprises. One chemist was serving his second term. There were three bankers and one bank director. One member was a secondary school supervisor. Two executives of local labor unions represented districts in New Castle County, and there were four minor executives of industrial concerns. The remaining were made up of farmers and tradesmen, the farmers formed the bulk of the downstate representatives.* In previous years there was a higher percentage of farmers. During the past two decades however at least one third of the membership has consisted of business or professional men.

Since 1920 only four women have sat in the General Assembly. The basic reason for this fact is that members of the legislature, by and large, are party workers. Election to the law making body is at once a means of the local party organization keeping in touch with political action on the state level and a method of reward for party service. Few women have given the time and the effort necessary to fulfill routine party work, consequently they have rarely been sent to Dover.

Members of the General Assembly are not young. The median age for

* Several legislators in the past have also held down city or county and state administration jobs. There has been a movement away from this practice although such dual office holding is legal. See *State v Corley*, 36 Del 135, 1936.

members of the Senate in 1949 was sixty-one years, for those of the House, forty-nine years. Both these figures were lower than the average of the medians for the preceding twenty years. In the past it has been rather difficult for younger men to gain sufficient recognition in a party for nomination to the legislature. The tendency was to use the legislative office as a reward for party service. The 1949 and 1951 General Assemblies however contained more persons under forty years of age than any other legislatures in the past twenty years. This fact may be an indication that new and more youthful blood is coming into the parties and also may be a result of Young Turk revolts which have begun to occur especially in the downstate counties. The youngest member of the House in the past four years was twenty-seven years old, the oldest was seventy. In the Senate the range was between forty and seventy-three years, but a high percentage of the members was above sixty-five years of age.

DESCRIPTIVE FEATURES

Qualifications for Membership

According to the Constitution a senator must have attained the age of twenty-seven years and have been a citizen and inhabitant of the State three years preceding his election. He must also be an inhabitant of his senatorial district unless absent on the public business of his State or of the United States. Likewise a representative must have attained the age of twenty-four years, and have been a citizen and inhabitant of Delaware three years next preceding the day of his election, and during the last year of that term he must have been an inhabitant of the district from which he is elected unless like the candidate for the Senate he was absent on the public business.¹⁰

"No person who shall have been convicted of embezzlement of the public money, bribery, perjury or other infamous crime shall be eligible to a seat in either House of the General Assembly."¹¹

Until 1897 no ordained clergyman or ordained preacher of the Gospel of any denomination who practiced his calling could become a member of the legislature of Delaware. This restriction was removed with the constitutional revision of 1897. Property qualifications existed for the office of senator until 1897 at which time all such requirements for civil office were removed.

Term

The term of a representative is two years and that of a senator is four. At present seven of the senators are elected in one biennium and ten in the next.

Salary

The legislative salary is set by the constitution at \$1,000 annually. In addition, a member of the legislature receives compensation for mileage to and from the legislative sessions. Total mileage is determined by adding the number of calendar days on which the legislature has met and multiplying this figure by twice the distance between Dover and home district of the member regardless whether he has attended the sittings or not. The rate is ten cents per mile.

Another privilege granted to the members is the free use of the telephone that is located in a booth outside the two chambers. No check is made upon the calls placed, and it is difficult to determine whether this phone is used only by members. Frequent articles appear in the local press condemning the administration of this privilege. Each member is permitted stationery and supplies not to exceed \$25 for any regular session and \$10 for any special session.

The Legislative Setting and Sessions

Dover, the state capital, has served as the meeting place of the legislature since 1777. By constitutional stipulation the meetings may be removed to another place in case of insurrection, conflagration, or epidemic disease. The present capitol is located in a meadow in the eastern section of Dover. It is in the Georgian colonial style with a large spire crowning the edifice. It is a three-storied building constructed of handmade bricks. The main stairway is of marble and the floors are of tile. The House chamber is on the left and the Senate on the right of the main entrance on the first floor level. The second floor contains the offices of the governor, the secretary of state, and the Legislative Reference Bureau. The basement and the loft are used for storage. Some administrative agencies are housed in the basement. Surrounding the capitol, which is known as Legislative Hall, is a series of drives bordered by evergreen bushes and well kept lawns. The setting is one of charm and simple elegance.

Legislative sessions are held biennially, being convened the first Tuesday in January of the odd years. Normally the session runs until late May, but recently the legislature has been sitting until late June. Meetings are called for eleven o'clock in the forenoon, but usually there is postponement until early afternoon. Adjournment is usually around five o'clock except toward the end of session when the midnight oil is burned.

Suggestions have been made from time to time that the General Assembly meet every year. The volume of business now before the law-making body has been cited as a compelling reason for an annual meeting. Another argument in favor of more frequent meetings is that the executive has been able to gain power at the expense of the legislature because he is

constantly before the public's eye while the lawmaking body meets but once every two years.

In 1951 a bill was introduced in the House to have the legislature meet every third Tuesday throughout the year. The idea contained in this suggestion apparently is that the committees of the legislature would sift the proposals for enactment and present a report every three weeks to the full houses for acceptance or rejection. It is extremely difficult to conceive of any protracted floor debate under this plan.

Special sessions are convened on the call of the governor. The Senate is convened in extra session from time to time to consider appointments to the judiciary. Special sessions, however, are not the rule largely because no limitation can be placed upon their agenda by the governor. The governor may in case of disagreement between the two houses with respect to adjournment, adjourn them to such time as he may think proper, not exceeding three months.

Officers and Employees

The lieutenant governor is the presiding officer of the State Senate.* The constitution further provides that the Senate shall choose a president pro tempore who is to preside over that body in the absence of the lieutenant governor. In addition to these two constitutional officers there are other officials appointed by the Senate upon the passage of a simple resolution. Usually there are three part-time chaplains, two attorneys, a secretary of the Senate, a reading and a bill clerk, and several sergeants-at-arms.† Assistants and aides to these officers also are named together with some twenty stenographers, messengers, and janitors. Oddly enough there is no doorkeeper for the Senate.

The House chooses one of its members to be its speaker. The House also elects a chief clerk, a speaker's clerk, reading clerk, document and bill clerks, a majority leader's clerk, a minority leader's clerk, a mail clerk, two attorneys, two doorkeepers, one chaplain, and several sergeants-at-arms. In addition to these officers there is an array of attaches.‡

The number of legislative attaches has been a matter for caustic comment by the press and reform groups in the state. Democrats and Republicans are careful however not to denounce too vociferously the outlandish number of appointments. Both parties are mindful of the need for this type of patronage. One unfortunate aspect of the practice is the opportunity it affords for confusion in the legislative process. Duplication of effort leads to misplacement of bills, failure to have bills ready for dis-

* The lieutenant governor has no vote unless the vote of the Senate is equally divided.

† In 1951 there were eight sergeants-at-arms in the Senate and four in the House.

‡ The total number of attaches in the 1951 session was over 100. The average pay is close to \$300 per month. They are chosen by the majority party.

cussion and debate, and to the nefarious system of buck-passing which brings the legislature into disrepute from time to time.

Although speaker and president pro tempore are the important majority party personages in the legislature, provision is also made for majority floor leaders and whips in both houses. The whips have the job of maintaining attendance especially when a vote is to be taken. The minority also have floor leaders and whips in both houses, but their duties are curtailed drastically because all floor management is in the hands of the majority. The chief task of the minority floor leader in either house is to watch for parliamentary breaks and to capitalize on them for his party's benefit.

Rules and Records

Under constitutional provision both the House and Senate have the power to draft rules governing their procedure. The Senate rules require that a senator must vote on a bill unless he is excused from voting by the Senate. All questions of parliamentary procedure are decided in accordance with Robert's *Rules of Order*. There are special rules governing executive sessions of the Senate. Executive sessions are usually held for the purpose of passing upon the gubernatorial appointments.

In addition to the separate rules for House and Senate both houses have drawn up a set of Joint Rules. These have to do in general with the handling of bills and resolutions after they have been acted upon by one of the houses. Conference committee procedure is also provided for under the Joint Rules. If a disagreement occurs between the two houses as to the wording or content of a proposed law, the presiding officers of the chambers will appoint three members from each of their respective houses to serve as a conference committee. If this committee reaches agreement, then both houses must either accept or reject their report without amendment. No conference committee is permitted to touch any part of a bill except that which is the matter in dispute between the two houses.

As one eminent and conscientious state legislator has said:

The rules (of the legislature) ordinarily control the conduct of the sessions but near the end of the legislative period when activity increases to a high pitch, rules are often suspended to expedite the business. The House may go as far as to make all readings of a bill by title only. Rule suspension as drastic as this seldom occurs except in the rush to adjourn *sine die*, but in that rush a great deal of very important legislation is generally passed.¹²

In addition to the published Rules the Senate and House maintain journals and keep calendars. The Senate keeps an Executive Journal. Unfortunately, there has never been a record of the debates in either house. Besides working a hardship on students interested in research in legislative problems, the absence of a verbatim record permits much of the argumentation of the legislature to go unnoticed by the general public. Often

the press attempts to present a running account of the proceedings but discretion must be used in reporting, otherwise the reporters might incur the legislative wrath and thus find their effectiveness circumscribed. Careful record of the speeches and debates would reveal the concepts and frame of reference that help form the legislative thinking. The lack of such recording permits perhaps a freedom of discussion that might not otherwise occur, but the advantage of having an accurate record of legislative activity would appear to outweigh the former and would introduce an element of responsibility for speech and thought that often appears wanting. There has, however, never been a concerted move in either house to preserve legislative thinking for posterity.

COMMITTEES AND CAUCUSES

The Committee System

In accordance with general legislative procedure throughout the American Union the Delaware General Assembly uses the committee system as the formal means of dividing its work among small groups for more intimate and detailed handling. Committees are selected in the House by the speaker and in the Senate by the president pro tempore. In recent years, it has been the custom to name five members to each of the standing committees in each house and to have a representation of two minority members of each committee. The ratio of majority to minority in the membership of committees tends to reflect the ratio of the parties in the House and Senate. More often than not, the majority in either house is one or two. Until 1951, when the speaker announced that his duties were such that he could not serve, he had sat on several committees. His decision was accepted with favor by the House, and it appears that a precedent may have been established.

The House has twenty-six standing committees, the Senate twenty-two (Table 4). The average number of committees on which a House member serves is four, and that on which a Senator serves is seven. Standing committees in the Senate as well as special committees are formally appointed by the president pro tempore; in the House by the speaker. The majority and minority floor leaders in the House designate the committee membership from their respective parties. In the Senate the president pro tempore makes majority designations and the minority floor leader designates who shall represent the minority party.

In addition to the standing and special committees there are several types of joint committee. One of these is the permanent joint legislative finance committee. From time to time conference committees consisting of members from both houses are formed in order to reconcile differences between the two chambers respecting legislative proposals. These com-

TABLE 4

STANDING COMMITTEES IN THE DELAWARE GENERAL ASSEMBLY, 1955

<i>House of Representatives</i>	<i>Senate</i>
Accounts	Accounts
Agriculture	Agriculture
Appropriation	Banking and Insurance
Charity	Buildings and Highways
Claims	Claims
Corporations (Municipal)	Corporations (Municipal)
Corporations (Private)	Corporations (Private)
Education	Education
Elections	Elections
Federal Relations	Executive
Fish and Game	Finance
Insurance and Banking	Fish, Oysters, and Game
Judiciary and Crime	Judiciary
Labor	Labor
Manufacturing and Commerce	Miscellaneous
Military Affairs	Passed Bills
Miscellaneous	Printing and Supplies
Passed Bills	Public Health
Printing and Supplies	Public Lands
Public Health	Revised Statutes
Public Highways	Rules
Revenue and Tax	Temperance
Revised Statutes	
Rules	
Supplies	
Temperance	

mittees are not to be confused with the "conference" or "screening" committee, which is not a legislative committee but an informal meeting of the speaker, the president pro tempore the majority and minority leaders, and the state chairmen of the major parties for the purpose of determining the legislative agenda and making necessary compromises between the two major parties so that the legislative action may proceed.

The Legislative Caucuses

Although the committee system has been formally adopted by the Delaware General Assembly that body uses the caucus as the chief means of legislating. The small size of the legislature makes the caucus a very handy way in which to iron out differences among the membership. In the Senate the majority caucus does not need a leadership group because of the relatively small size of the membership. In the House a steering committee consisting of the speaker, the majority leader and the state chairman of the majority party meets and helps the other members of the House caucus to arrive at a decision. Often the Senate and House majorities will

caucus together after they have met in their separate huddles. The real power, however, in the majority caucus consists of the legislative leaders and the state chairman. In the minority caucus there is less effort at central control, yet the state chairman of the minority party will sit with the minority legislators and develop well-laid plans of attrition against the majority. If the division between the parties in the legislature is close the effect of a well-organized and well-led minority is considerable.

Party Caucuses

Perhaps Delaware is unique in having the state chairmen participate directly in legislative caucus, but the peculiar nature of the political process in the State requires some agency through which the divergent attitudes and values prevailing among the several counties can be reconciled. It would be highly unrealistic for a governor or for legislative leaders to take action which had not cleared through some informal screening process at which point the separation of the important from the unimportant issues and their possible solutions can be finally determined. The legislative floor is too formal a place to make compromises, and the legislators themselves are not in a position to act as brokers of the private or local interests. It is at once effective to have the overall party leadership "in" at a solution and at the same time bear the brunt or onus for having made specific adjustments in local demands.

Party lines are not always firmly drawn even after the leaders have spoken, but because of the political relations among the three counties and Wilmington it is of utmost importance from the standpoint of party harmony that no legislative action be taken until every effort has been made to weigh its effect upon local opinion in the several sections of the state. No group is better able to assay this effect than the party leaders within the several counties. Sometimes members of the legislature become annoyed at too close shepherding of their activities by party chiefs, and resent "steamroller tactics,"* but generally speaking they are appreciative of the acceptance of responsibility for action by the party leaders.

The party caucus is one means by which the intense particularism that is fostered by the legislative apportionment of the constitution is partly circumvented. Without the caucus the legislature would become the scene of perpetual struggle among representatives of the localities, each bent upon exercising a sort of *liberum veto* upon any state-wide legislation not in conformity with his pet prejudices. It is in the caucus that the basis for a common brokerage among the sectional demands is found. The state chairman (together with the "inner circle") is the one who effects the amal-

* *Wilmington Journal-Every-Evening*, April 12, 1943. Resentment is particularly strong when bi-partisan screening committees composed of top-level policy makers within the two major parties attempt to set up the legislative program. See also *Wilmington Journal-Every-Evening*, June 23, 1953.

gam of the various interests within his party and makes a legislative program possible. Most of the critics of the caucus system overlook completely this important aspect of the legislative process. The need to reconcile diverse demands is becoming more pressing as the older homogeneous society of the State gives way to the newer heterogeneous groupings.

Apart from the caucuses which include the party chairmen, members of the party to which the governor adheres will meet with him "upstairs" in the governor's office on the second floor of the capitol. There they may get the "word" on what bills must be passed and which will be vetoed if passed. Sometimes after these meetings there will be a strictly legislative caucus "downstairs" in the caucus rooms to determine whether the members will go along with the governor. Some very painful moments are experienced by legislators wrestling with their political future and their party loyalty after the governor has "cracked the whip."¹³ These meetings between legislators and chief executive have become more frequent of late, and are an indication of the increased role played by the governor in the determination of public policy. The legislature more and more is coming to look to the governor for guidance when he is of the majority party.

NOTES

¹ See *Rice v Foster*, 4 Harrington 489 (1849).

² Constitution of 1792, Art. II, sec. 3.

³ See *Debates in Constitutional Convention of 1853*, p. 181 ff.

⁴ *Ibid.*, p. 187.

⁵ *Ibid.*, p. 199.

⁶ *Debates in Constitutional Convention in Delaware, 1897* (Dover, 1897), IX, 5457.

⁷ *Sussex Countian*, February 20, 1941.

⁸ *Wilmington News*, January 27, 1949.

⁹ See article by State Senator E. B. Bengert appearing in the *Wilmington News*, October 9, 1951.

¹⁰ Constitution of Delaware (1897) art. II, sec. 3.

¹¹ Constitution of Delaware (1897), art. II, sec. 21.

¹² Article by Sen. E. B. Bengert, *op. cit.*

¹³ See article by Senator Bengert on this subject. *Wilmington News*, October 12, 1951.



CHAPTER 5

Legislative Powers and Procedure

IN THE PRECEDING CHAPTER we noted the organization and structure of the legislative authority. In this chapter an effort will be made to outline (1) the legislative powers, (2) the aids used by the General Assembly in pursuit of its legislative duties, (3) the procedure followed by the lawmakers in enactment, (4) the role played by the lobbies and the pressure groups in the legislative process, and (5) the relationship between the administrative and legislative branches of the state government.

LEGISLATIVE POWERS

The authority of the General Assembly of Delaware can be broken down into four basic fields, namely, (1) the general lawmaking power, (2) the control over the purse, (3) special and local legislation, and (4) the right of investigation. In addition the Senate exercises some executive authority in that it confirms certain gubernatorial appointments. By constitutional fiat the legislature has the right of impeachment and trial thereupon, and it may by the process of address remove certain officers from their positions. We will be concerned here chiefly with the four fundamental areas of legislative competence, the most important of which is that of general lawmaking.

General Lawmaking Powers

The state constitution is one of the sources of the legislative authority of the General Assembly. In addition there is the residual power of police that comes by right of the state's existence as a governmental entity.

Specifically, this power might be said to be recognized by the Tenth Amendment to the Federal Constitution.

Positive statements concerning the legislative power of the General Assembly are not found in the Delaware Constitution. The authority of the legislature comes from the fact that it is the exponent of the police power and from the fact that historically the lawmaking body has been the forum in which public policy has been formulated. The state judges have contended that the constitution merely limits the legislature but does not give it power.¹

The limitations are specific with respect to bill drafting, and there are definite restrictions upon certain types of legislation. No bill or joint resolution, except bills appropriating money for public purposes shall embrace more than one subject, which shall be expressed in its title. No bill establishing a lottery or permitting wagering (with the exception of pari-mutuel machines for betting on races at race tracks) may be introduced. No divorce may be granted by legislative order. No local or special law relating to fences may be enacted by the General Assembly.

Although decisions in many fields of public interest are made in the legislative halls (as, for example, legislation regulating conditions of employment), the force of legislative power is felt to its fullest in the authority over the purse. It is in the sphere of public finance that the legislative will can be most effectively exercised, for it is a fact that in modern government policy making is closely associated with the expenditure of public money.

Fiscal Powers

Budgetary controls at state level have tended, in recent years, to come within the purview of the governor. In 1939 an executive budget law was passed, and with its passage, the legislature lost much of its authority over the initiation of state expenditures.² Today, the average legislator is confronted with the acceptance or rejection of the budget drawn up by the Permanent Budget Commission, which body is largely within the purview of the governor.

The executive budget is transmitted by the governor to the General Assembly along with his opening message. The message, however, usually does not include any detailed explanation of the items proposed in the budget, it being an over-all picture of the State's financial position and the governor's suggestions for the amount of revenue to be collected and the expenditures to be made for the ensuing biennium.

The budget, once it is received by the legislature, goes to the Joint Committee on Finance, which is composed of the members of the House Appropriation Committee and the Senate Finance Committee. This committee holds hearings on the proposed appropriations and then meets with the governor, the minority and majority leaders of the houses and the state

chairmen of the two political parties in the State. This "finance caucus" is the instrument largely responsible for final legislative approval being given to the expenditures to be made by the State. This group is also the one that actually determines the amount and types of revenue to be raised. All appropriation acts and bills for the raising of revenue, of course, must pass the two houses of the General Assembly. By law, the revenue bills originate in the House of Representatives and by custom, the appropriation acts have their introduction in that house.*

Although the initiation of proposed state expenditures is made by the executive, the Joint Finance Committee of the General Assembly tends to make a full review of the proposals. It holds budget hearings to which come the several administrative agencies' representatives. There have been occasions when the gubernatorial budgetary recommendations have been cut severely, and there have been times when reductions made by the governor have been restored by legislative action. In sum, however, the proposals of the governor are usually adopted. Delaware has not yet been faced with the spectre of a revival of the legislative budget. Of course, if the governor is faced by a hostile party in control of House or Senate he can expect to have difficulty with his budgetary proposals. The threat of veto, however, is often a good counterbalance to legislative recalcitrance in this respect.

It is in regard to the raising of revenue, either through taxation or by borrowing, that the legislature (and particularly the Joint Legislative Finance Committee) comes into its own. In fact *individual* lawmakers have an overweening power in respect of borrowing because of the constitutional provision that such action must have the approval of three quarters of the members elected to each house. It is in the matter of revenue bills and bond issues that much of the swapping and trading of votes takes place in the Delaware legislature. Many a bond bill has been held up by a few legislators until they have gotten assurance of majority support for their own pet measures. Effecting this support is known as "trading", and it has been the plague of legislative action in the First State.

Prior to 1921, the year of the first attempt at the creation of an executive budget, the legislature had full charge of allocations. The so-called legislative budget was in reality a series of hand-outs of money by the legislature to the several administrative agencies. This piecemeal arrangement proved completely unsatisfactory to the more articulate taxpayers of the State, and accordingly, strong moves were set afoot to take the power to initiate appropriations away from the lawmaking body and turn it over to a central authority, namely, the governor. By law, of

* To abet the legislature in its handling of financial legislation, the state treasurer and the state auditor of accounts are enjoined to present reports to the General Assembly.

course, the legislature still passes upon the final determination of the budget, and in addition it has retained the right to supervise, through the setting up of accounting agencies responsible to it, the actual expenditure of the funds allocated.

The governor has not been given the formal power of accounting. Yet by creating the Permanent Budget Commission and placing it largely under the control of the governor, the legislature has made it possible for him to exercise strong influence over the spending of the State's money. More will be said later about the governor's role in the control of the purse, especially in respect of the administrative groups.

Special and Local Legislation

The legislature is restricted from the enactment of various types of special and local legislation. It cannot give bills of divorce, pass local or special laws relating to fences, strays, ditches, boundaries of school districts, or the laying out of alleys or streets. Corporations, other than those of a municipal nature, or of a charitable, educational, or banking nature partially supported by the State cannot be created by special act. General incorporation laws must have the concurrence of two thirds of the elected members to each house.

The bulk of the statutes passed during the average legislative session deal with municipalities, state administrative agencies, and education. Municipal charters are being amended constantly. Each incorporated town or city in the State is generally interested in having its powers expanded. The legislature has never classified the towns or cities except into the two groups of "incorporated" or "unincorporated," and consequently whenever there is a policy change in relation to one community, which logically should be applied to others like it, there is the necessity for passing individual acts for each of the communities that falls into the same category as the one to which the policy change applies. Recently the population expansion, which has been felt mostly by the towns in the northern section of the State, has brought about constant demand for extension of town territory and an increase in municipal power. This type of legislation absorbs a great deal of the lawmakers' time because of the multifarious interests involved.

Investigative Function

Although the chief function of the General Assembly is concerned with the passing of legislation, the legislature, from time to time, sits as "the grand inquest" of the State. The power to investigate matters in which there may be reason for legislation unquestionably rests with the General Assembly. Investigation of this nature is usually perfunctory, consisting of listening to demands from interest groups. Investigation of administrative officials for the purpose of seeing whether legislative edict has been dis-

regarded or whether these officials are exceeding their authority, is an area, however, in which the legislature is also capable of acting. Examination of agency activities for the purpose of passing "ripper legislation," that is, the tearing out or abolishing of some agency from the administrative system, has within fairly recent years been a subject of legislative concern. In 1939 the legislature exercised its power in this respect on two different occasions. It ripped out the Mosquito Control Commission and transferred its activities to the Highway Commission.³ Later in the same session, it "reorganized" the Highway Commission, removed the governor from his ex officio position on that commission, and named four members of the seven man board.⁴ Both these actions were taken after the legislature had investigated the agencies concerned and found them wanting in certain particulars.* In 1955 the legislature entered upon a most ambitious program of ripper legislation in which the Highway Commission, the Liquor Commission and the Departments of Elections in the counties felt the sting of partisan retaliation.

In addition to the investigation of the commissions, which, by judicial decision, are under the authority of the legislature,⁵ the legislature may exercise the right of address and remove subordinate officers of the government. Although this power has not been used in formal sense, something akin to it was carried out in 1947 when the superintendent of state police was removed by the state Highway Commission after a joint resolution demanding his dismissal had been passed and signed by the governor.⁶ This action by the legislature was the result of an "investigation" by two of the legislators of conditions in the state police sub-stations.

There have been occasions when the legislature has investigated the activities of certain industries, with the result that the General Assembly from time to time has established temporary administrative commissions for the purpose of policing those industries.† In addition to this type of legislative activity in the area of administration, there has been a tendency for the legislature to supervise the existing administrative agencies to the point of directing administrative routine. One possible solution to the need for legislative surveillance of the agencies would be the enactment of an administrative procedures act. There has been some slight agitation in this direction. If such an act were adopted the agencies would have the responsibility for seeing that administrators did not deny proper process of trial in handling issues before them. If the public were assured of fair dealing when hauled before the administrative agencies, then the legisla-

* In the case of the Highway Commission's reorganization, the issue concerned the appointment of a superintendent of state police, which office is under the authority of the highway board.

† As in the case of the special Milk Commission appointed in 1933. 38 *Delaware Laws* 59 (1931).

ture would not be called upon so frequently to intervene in administrative activity.

Quantity of Legislation

The average number of bills passed in a regular session in recent years is about 400. Over half of the enactments are not agreed to until the last hectic week of the term, and then many of them are steamrolled through after having been given the "green light" by the "screening" committee.* The device of the screening committee has been accepted by the legislature as the only workable means of getting the legislative deadlock broken at the end of the session. In view of the fact that over 1,000 bills reach the legislature hopppers during each session, it is necessary that some sifting be done.

TABLE 5

BILLS AND JOINT RESOLUTIONS INTRODUCED, PASSED, AND VETOED,
SELECTED YEARS, 1901-1955

<i>Year</i>	<i>Introduced</i>		<i>Senate</i>	<i>Passed</i>		<i>Vetoed</i>
	<i>Senate</i>	<i>House</i>		<i>House</i>	<i>Both</i>	
1901	171	247	122	185	285 ^a	..
1909	220	366	93	192	251	1
1921	237	271	142	150	236	5
1931	190	335	139	224	326	6
1941	248	421	145	216	286	..
1949	426	609	219	304	443	37
1955	525	705	225	372	537	49

^a Includes several private bills.

As can be seen in Table 5, the legislative work load has increased considerably since the turn of the century. Within recent years a slightly higher percentage of bills introduced have been rejected than was the case in the earlier years. The governor has tended to use his veto more frequently within the past twenty years than was the case in the three preceding decades. The House by far has had the bulk of the legislative work load although during the 1940's the work of the Senate almost doubled. Part of the explanation for the greater load in the House is that all money bills must start there and the larger number of representatives makes the introduction of local bills take place in that body.

In addition to the regular statutes enacted by the two houses, and either approved by or passed over the head of the governor, there are usually thirty or more joint and concurrent resolutions included in the regular

* Sometimes "tough" bills, that is, those that have received the approval of the legislative leaders, but are not acceptable to the governor or the "boys upstairs," are permitted to slide and thus are defeated in the closing hours of the legislature. See *Wilmington News*, May 16, 1951.

session laws. Usually these resolutions have to do with the legislative procedure. In the case of joint resolutions, they have the force of law and need the governor's approval or a three-fifths majority to defeat his veto. The legislature has often used the concurrent resolution as a means of setting up investigative commissions with a view to acquiring information that can be used in the formulation of needed legislation. As in other states, the concurrent resolution is also used to memorialize the Congress respecting certain matters of interest to the commonwealth.* One favorite subject in Delaware memorials is the comment on the relatively high per capita returns on Federal income tax from the State. The Delaware legislature is on record calling for the revision of the Sixteenth Amendment to the Federal Constitution to the extent that the maximum rate of tax should in no case exceed 25 per cent.⁷ This demand for a revision was made during the very height of the war effort!

LEGISLATIVE AIDS

Most American state legislators come to their office without previous knowledge of the legislative process. The introduction of bills, the drafting of legislative proposals, the parliamentary maneuver are completely foreign to the average state solon. He needs help, often of a professional nature, in order to prepare himself properly for the task of formulating public policy. One of the chief complaints from discerning Delaware legislators is that the General Assembly does not have this kind of help. Although surrounded by attaches, the members usually find themselves without any real assistance. Attaches serve mostly as errand boys whose chief duty is to see that each member is supplied with copies of newly introduced legislation and that proposals made by the members reach the presiding officer's desk or are properly routed to committees. Clerical help is practically unknown in Delaware legislative halls, except that one or two of the standing committees has recently availed itself of a secretary.

In the 1930's each house appointed an attorney to help it with the burden of bill drafting. This aid was necessary in view of the utter inability of many members to draw up their own bills in proper legal wording. The pay offered these legal advisers has never been sufficient to have them give full time to the problems of bill drafting. In 1945, the legislature, while retaining the House and Senate attorneys, created the Legislative Reference Bureau.⁸

Legislative Reference

The Delaware Legislative Reference Bureau is perhaps unique in that it is not meant to be exclusively a legislative aid. The executive board of

* In Delaware, the concurrent resolution requires the signature of the governor, but does not have the force of law.

the bureau is composed of the governor, the president pro tempore of the Senate and the speaker. This board has little authority. The actual work of the bureau is done by an executive director, who is appointed by the governor and serves at his pleasure. Thus the executive arm of the government has a direct influence in the operation of this agency. Although the director serves as chief attorney of the legislature, he is assisted by the attorneys of the respective houses. These officers owe him no allegiance and often are of the opposite party. Hence, the legal work of the bureau with respect to the drafting of bills is done not under the direction of the legislature but under a rather odd splintering of authority the bulk of which rests with the governor's office.

Serving under the director and responsible to him are four clerks. These jobs are usually considered part of the executive patronage. These clerks are kept busy making copies of proposed legislation coming from the several administrative agencies, typing up drafts of bills which legislators have requested, and in obtaining from other states copies of laws pertaining to matters upon which the governor, state agencies, or individual legislators wish to be informed.

Unfortunately, the bureau has not conceived of its being a research agency. No funds have been appropriated to help it engage in legislative research, and in addition, the directors have not shown any inclination to foster a system of investigation. Much can be done to improve the work of this agency in this respect, but until the legislators come to view it as a vital link in the process of legislation, it will probably continue to be a bill drafting organization. Perhaps the fact that it has been set up under the aegis of the governor robs it of any real chance to become part of the lawmaking machinery. If the bureau is to be a legislative device, it should find its *raison d'être* in the legislature and not in the executive.

Bill Drafting

By law, all state agencies must first submit to the Legislative Reference Bureau the proposals that they desire to present to the legislature. In practice, this requirement is often ignored. Legislators often refuse to use the bureau because of the fear of "bill stealing." It is alleged that if members of the party opposite to that of the governor tender proposed bills to this agency for perusal and advice, there is a danger that the bill will be introduced by a legislator of the governor's party. The fear of bill stealing has, regardless of the accuracy of the charge, reduced the efficacy of the bureau. However, in spite of reduced usage, the bureau, in 1951 prepared almost half of the bills submitted in that year. Many of these were, of course, concerned with routine legislation.

The bureau has not been able to prevent the log-jam in the last week of a legislative session, but it has helped the legislature get underway more quickly. Many opening session resolutions and measures necessary to get

the houses functioning are drafted in advance of the session. Printing contracts are drawn up and ready for execution by the time the Senate and House are ready to convene. The budget, which is prepared by the Permanent Budget Commission, is in final form and ready for presentation to the legislature immediately following the governor's message in early January. Standard or fairly set appropriation bills are in readiness. In recent years, many more bills have been passed in the early weeks of the legislative session, a fact which attests to the work of the bureau.

Staff Assistance

Apart from the service of the attorneys and the Legislative Reference Bureau, the legislature, as noted above, makes use of a goodly number of attaches. Mostly, these persons are connected with the routing of bills through the various stages of the legislative process. There are only a few stenographers and clerks assigned to committees. The absence of competent clerical assistance is one of the most formidable obstacles confronting the legislators in the performance of their duties. If there is to be an assault upon the caucus system and the making of legislative decisions by oligarchic party leadership, then it would seem that the committee system has to be invigorated. This can be done only by giving the committees sufficient help. Adequate clerical assistance combined with proper staffing, both within the committees themselves and by means of a Legislative Reference Bureau whose orientation would be in the legislative branch, are the minimum requirements for a properly functioning law-making body.

Codification

Session laws appear under successive volume numbers. Statutes are gathered into what is called the *Revised Code of Delaware*.^{*} Approximately every twenty years, the legislature authorizes a revision of the code. Revisions so far in this century were made in 1915, 1935, and in 1953.

The code of 1953 is divided into five volumes. The division is merely a matter of convenience so that each volume can be easily handled. The general sub-divisions, or "titles," number thirty-one. They are arranged alphabetically after the first one, which is entitled "General Provisions." The code is an enactment of the legislature; it is the official body of statute law in the State as of the date of its enactment. The Code Commission, which set up the present arrangement, suggested in 1953 that instead of a general revision every twenty years, there be continuous revision each biennium as the new statutes appeared. Accordingly, the General Assem-

^{*} The official name of the revision in 1953 is *Delaware Code of 1953*, but the popular and general reference is the *Revised Code of Delaware* (1953). Although both citations are used, I have preferred the latter.

bly in that year established a permanent code commission, composed of the director of the Legislative Reference Service and one other attorney appointed by the governor, which, at the end of each legislative session, will incorporate in the appropriate place in the code the text of all amendments and new legislation, deleting all repealed sections of the Code. There is to be a biennial publication of a pocket supplement inserted in the back of each volume.⁹ The new *Delaware Code, Annotated*, is a private publication. It contains court decisions affecting the statutes as well as the statutory text.

The divisions of public legislation in the revised code are categories that have been established by the General Assembly. Most public law enacted in the State is capable of being fitted into them. The arrangement of the present code is as follows:

<i>Title</i>	<i>Subject</i>	<i>Title</i>	<i>Subject</i>
1	General Provisions	16	Health and Safety
2	Aeronautics	17	Highways
3	Agriculture	18	Insurance
4	Alcoholic Liquors	19	Labor
5	Banking	20	Military and Civil Defense
6	Commerce and Trade	21	Motor Vehicles
7	Conservation	22	Municipalities
8	Corporations	23	Navigation and Waters
9	Counties	24	Professions and Occupations
10	Courts and the Judicial Procedure	25	Property
11	Crimes and Criminal Procedure	26	Public Utilities
12	Decedents' Estates and Fiduciary Relations	27	Religion
13	Domestic Relations	28	Sports and Amusements
14	Education	29	State Government
15	Elections	30	State Taxes
		31	Welfare

LEGISLATIVE PROCEDURE

After the election of officers and the appointment of committees the House and Senate are ready to consider legislative proposals. Usually, however, both houses recess until the governor has delivered his message. When there is a new governor, the legislature is apt to wait until after his inaugural before beginning business. The governor is inaugurated the third Tuesday in January following his election. Legislatures have been known to appeal to the governor for a program so they could begin to legislate. During the interim between convening and the hearing of the governor's message both houses either stand recessed or work on such matters as the letting of the printing contract. The passing of a concurrent resolution to

call a joint session to hear the governor is usually done during the first week. The naming of attaches for the respective houses also takes place during this time.

Introduction of Bills

After the gubernatorial address the legislature is ready for business. Proposals for changes in the statute law of the State begin to pour into the hoppers in both houses. Most of these proposals come from the administrative agencies in the state after having been funneled through the governor's office. Some of them may have been incorporated in the governor's message. There is always a number of bills that come directly from the legislators themselves. By and large a much greater number comes from

TABLE 6
DAILY ORDER OF BUSINESS IN THE DELAWARE GENERAL ASSEMBLY

<i>Senate</i>	<i>House of Representatives</i>
Calling of the Senate to order	Calling of House to order
Prayer by the Chaplain	Prayer by the Chaplain
Calling of Roll	Calling of Roll
Reading of Journal	Reading of Journal
Presentation of petitions, communications	Communications for Speaker
Reports from standing and select committees	Reports from Committees
Introduction of bills and joint resolutions	Introduction of new business and first and second readings of bills
Introduction of concurrent and other resolutions	Business on the Calendar
Bills for third reading	Miscellaneous business
Miscellaneous business	

pressure groups such as civic organizations, churches, various trade associations, labor unions, corporations (although in Delaware the corporations usually make few proposals, being content to defeat adverse legislation), and certain minority groups, which have recently become exceedingly articulate. Another great lump of legislation is proposed by the municipalities in the State, usually these are concerned with alterations of town charters so that greater power or more extensive authority can be given the local communities. One source of legislation that has become increasingly important in outlining the work of the legislature is the experience and legislation of other states. (The Legislative Reference Bureau is specifically charged by law with the examination of the acts of other commonwealths for the purpose of making proposals to the General Assembly.)

Legislation emanating from the governor and the administrative agencies clears through the Legislative Reference Bureau. If a proposed bill comes

fully drafted directly from the pressure groups, the member introducing the bill will often turn it over either to the Legislative Reference Bureau or to the attorney of his house for a check as to phraseology. The practice of letting experts draft proposed legislation has resulted in making the statute law much more readable than it was formerly.

Bills may be introduced up to a certain deadline set by concurrent resolution. The existence of the deadline has the effect of causing bills to pile up so that it is literally impossible for the clerks to process them. In order to insure the introduction of all the bills the members want placed in the legislative hopper, both houses have resorted to the device known as the skeleton bill. By simply getting a bill, devoid of content, into the clerk's hands by the time of the deadline, a member is assured of being able to introduce at a later date the legislation he desires. At the later date the member merely fills in the details of the skeleton bill or introduces a substitute in its stead. This process is often used insidiously by pressure groups to get a controversial bill bearing an innocuous title introduced as a skeleton, and then in the last rushed days of the session the bill is filled in and often escapes the scrutiny of the legislature. There is presently a movement afoot to dispense with the deadline and the skeleton bill.

The Passage of Bills

Once the bill has been properly drawn, the formal legislative procedure begins. Bills must be introduced in a house by a member of that house. The original is given to the clerk or secretary and assigned a number. Copies go to the press, the document clerk, to the majority and minority leaders, to the speaker or president pro tempore, and to the sponsor.¹⁰

Bills are read twice on the same day in the House. The first reading is in full, the second is by title only. After the second reading it is referred to a committee by the presiding officer. Hearings of a public nature are then held by the committee in charge of the bill. The committee may report the bill favorably, unfavorably, or on its merits.* It may pigeonhole, but an affirmative vote of a majority of the members in the house considering the bill may bring it out for a vote. After the bill has been reported it is ready to be called up by its sponsor for third reading and to be "placed on passage." Generally this reading is in full. In the closing days of a session, however, suspension of the rules permits brief third readings. After the bill is placed on passage it is debated on the floor. Amendments are in order, and a final vote is taken.

The final vote must be by the yeas and nays, all properly recorded. *Viva-voce* voting is not customarily employed except for the determination of procedural matters. Discharge of bills from committees requires a re-

* A bill is reported "on its merits" when a committee feels constrained to put it to a vote of the house, but does not wish to argue in its favor or to report it unfavorably.

corded vote of eighteen members in the affirmative in the House; in the Senate nine votes are required. The teller system in which the members walk past two persons who count the numbers for and against a measure, is not used in the Delaware legislature. If the bill is defeated it may be replaced on the calendar of the same session and it may be called up again by its sponsor.

Once a bill has passed the house in which it originated it goes to the other house and there undergoes practically the same procedure although it needs no new sponsor, the speaker or president pro tem merely assigning the bill to the appropriate committee. If it is amended in the second house it returns to the first house for concurrence. If concurrence is not forthcoming a conference committee is formed consisting of members from both houses. Both houses then vote upon the report of this committee.

In all ordinary legislation there must be a majority of all the members elected to each house voting in the affirmative. In legislation raising the public debt the concurrence of three fourths of all members elected to each house is required. Also no appropriation of the public money shall be made to any municipality or corporation except by the concurrence of three fourths of all members elected to both houses. No general incorporation law may be enacted unless it has the vote of two thirds of all the members of both houses. In granting jurisdiction over criminal matters to any court established by it the General Assembly must act with the concurrence of two thirds of all the members elected to each house. The necessity for extraordinary constitutional majorities in certain areas of legislation aids the practice of trading votes among the legislators. It is quite possible for a few members to hold up legislation under the three-fourths and two-thirds requirements. The necessary votes can be gained only at the price of passing legislation that the hold-outs want for themselves. Many of the lawmakers have inveighed strongly against this practice but to no avail.

Action by the Governor

Once a bill has been agreed to by both houses and has the signature of the respective presiding officers, it is sent to the governor, who has ten days (Sundays excepted) in which he may veto and return the bill to the house in which it originated if he so desires. The vote of three fifths of all members elected to each house is required in order to pass the bill over the governor's veto. If the legislature has adjourned *sine die*, the governor has thirty days after adjournment in which to sign the bill. Failure to sign in this period results in an automatic veto.

After the bill has become law it is given a blue backer in which it is enclosed and then sent to the secretary of state for promulgation and inclusion in the session laws. It receives a chapter number, and the title is written in bold face directly under the chapter number.

Improvements in Procedure

There are several practices in the Delaware General Assembly that should be either eliminated or drastically modified in order to make the legislative process compatible with the assumptions of a democracy and the efficient handling of legislation. First, the House and Senate caucus system should be overhauled to permit a meeting of the leaders in both houses to pass on the legislative agenda before the mass of bills are brought out for debate. At the point of debate a bill many times is sent back to committee and there often gets "screened" out because it has not been accepted as part of the trading process. This often leads to bitterness on the part of legislators. If the legislative leadership would decide beforehand which bills they would support and then bring these into debate much of the time and patience of the members would be spared. Second, the use of the skeleton bill should be abolished. Thirdly, the practice of or privilege of having a bill restored to calendar after it has been defeated merely clogs the legislative program and often requires that a second decision be made, thus adding to the confusion of the chambers.

If a legislative program were drafted and then charted through the House and Senate by the respective leadership much streamlining could be accomplished. The petty legislation of extremely local nature would not be allowed to get in the way of important state-wide legislation and the overall calibre of the legislature would rise. Unless the legislature does establish its own effective leadership, the danger is that control over public policy, that is, effective decision-making will more and more gravitate toward the executive and administrative arms of the government. Serious thought is now being given to this basic problem by students of government at state level.

LOBBIES AND PRESSURE GROUPS

In respect of laws affecting the operation of the State's administrative agencies, there is need for the legislators to reflect upon the various pressure groups' demands vis-a-vis the administrative process. Although more and more power to determine administrative policy is being transferred informally to the administrative commissions, the legislature is loath to give up its formal control in the area of administration. Hence, such items as the definition of noxious weed seeds absorbs two pages of the session laws for 1943 respecting the administrative powers of the State Board of Agriculture. In 1939 in the regulation of the Insurance Department the legislature went on for six pages delineating the clauses to be written into standard life policies with respect to forfeiture.¹¹

Legislation affecting administration is often the direct effect of strong administrative lobbies working directly with the legislators. Not only do

the administrative agencies work effectively upon the legislature to gain desired legislation but they use private interests closely associated with the agencies to pressure the legislators. The administration lobby is one of the more important factors in the legislative process.

Railroad, farm, and welfare organizations are the strongest and most effective pressure groups in the state capital. Certain railroad companies have kept paid lobbyists in fairly constant attendance at the legislative sessions. The farm groups operate in both direct and indirect ways to keep their demands before the legislative eye. Welfare organizations are beginning to bring a steady drumfire upon the representatives and senators to improve the appropriations and to extend the coverage of the administrative agencies engaged in welfare activity. Private fire companies, local charitable and eleemosynary institutions use the local representatives to gain their ends, which in most cases are grants of money. School officials are constantly after the legislature to increase the appropriations for schools and to amend the school laws to the extent that a wide degree of local autonomy is obtained in school administration. Teachers' unions have become decidedly stronger in recent years, and at some sessions their presence in the legislative chambers has resulted in rather heated situations. In 1951 labor unions were successful, both through their agents and their own members serving in the legislature, to have certain laws obnoxious to organized labor repealed. The Delaware State Chamber of Commerce keeps a close touch on legislative activity, and certain church groups have descended in force upon the legislators when bills authorizing gambling are introduced and considered.

No laws have been passed regulating lobbies in Delaware. Consequently, there are no statistics on the number of lobbyists, the amounts of money spent by them, or any information concerning the methods in which they must operate. Basically, lobbying in Delaware is done in the most informal manner, although at times the lobbyists will be seen in the legislative chamber itself. Several attempts have been made from time to time to enact legislation regulating lobbies, but nothing has come of these efforts.

EXECUTIVE-LEGISLATIVE RELATIONS

Although the state constitution outlines the basic conceptions controlling administrative practices in Delaware, the detailed pattern of administrative organization has been the work of the General Assembly. Apart from the elective executive offices and that of the secretary of state, all the administrative offices owe their existence to statute. The right of the legislature in this respect has been stated by the courts.¹² The General Assembly, according to the courts, has control over any office it creates.¹³ Not only has the legislature set the pattern of administrative organization, but it also

has the authority to determine the manner in which the administrative officials are appointed to or removed from office.

While generally denying to the governor the right of removal over administrative officers, the General Assembly has at times exercised this power itself. The right of address and impeachment lie with the legislature, but these formal methods of removal are not used. Instead, the legislature, if it desires to get rid of a subordinate officer, brings pressure to bear upon the administrative agency in question. If an entire agency has incurred the legislative displeasure, ripper bills may be resorted to. This type of action has acted as a boomerang, however, in that it tends to make the administrative agencies seek the protection of the governor, and thus places them informally at least within his power.

In respect of administration the General Assembly has tended to maintain a watchful eye, yet there is a lack of machinery that would permit intelligent supervision of the administrative agencies. This has made the administrative-legislative relationships at times exceedingly uneasy. The suggestion has been made that the legislature take the time to review its relationship to the administrative groups and devise an approach which will have as its goal the institution of machinery for evolving cooperation between the two branches of government, particularly in the determination of public policy. There is increasing evidence that this approach is being adopted and that definite progress in administrative-legislative relationships is being achieved.

NOTES

¹ See opinion of Judge Rodney in *State v Collison, et al.*, 39 Del. 304.
² 42 *Delaware Laws* 204 (1939).
³ 42 *Delaware Laws* 12 (1939).
⁴ 42 *Delaware Laws* 173 (1939).
⁵ *State v Burris*, 4 Del. 3 (1901).
⁶ See *Wilmington Journal-Every-Evening*, April 11, 1947. The governor was most reluctant to accede in the legislative request but did so nevertheless, because he needed legislative support for certain highway measures that he deemed of great importance to the welfare of the State.
⁷ 44 *Delaware Laws* 221 (1943).
⁸ 45 *Delaware Laws* 296 (1945).
⁹ 49 *Delaware Laws* 347 (1953).
¹⁰ For a fuller account of the legislative procedure in Delaware the reader is referred to an excellent series of articles that appeared in the *Wilmington News* in September and October, 1951, written by State Senator E. B. Benger. See particularly, *Wilmington News*, October 11, 1951.
¹¹ 42 *Delaware Laws* 63 (1939).
¹² *State v Emerson*, 40 Del. 328 (1939).
¹³ *State v Burris*, 4 Del. 3 (1901).
State v Isaacs, 36 Del. 110 (1934).



CHAPTER 6

The Governor

HISTORICAL BACKGROUND

THE POSITION of the governor in the State of Delaware has developed over the past 175 years from that of being a complete non-entity to that of constituting the most powerful political assignment in the commonwealth. Under the first constitution there was no such post. The titular head of state was a presiding officer of a privy council who owed his appointment to the General Assembly. He was called "president," and his powers were restricted to such a degree that when the first official in the position was captured by the enemy during the Revolution, no attempt was made to replace him until two years had passed.¹ Delaware shared with the other states the dislike of a powerful chief executive. The executive power that did exist included only making appointments and serving in a ceremonial capacity. Even in the exercise of these limited powers, the president was closely supervised by a suspicious, county-dominated General Assembly.²

The constitutional revision of 1792 provided for a popularly elected governor. This officer was given power to appoint all state officers with the exception of the treasurer and auditor. He had, however, no power to remove unless the official had been convicted in open court or an address had been made by the legislature. The governor was charged with taking care that the laws were faithfully executed, and, oddly enough, his approval had to be obtained before amendments to the constitution were valid. He had no veto power over legislation. The significant feature of the Constitution of 1792 with respect to the office was that the executive emerged as an independent officer charged with the duty of seeing that the laws were properly executed. Yet administrative powers were not given him by either the constitution or the statutes. The fact, however, that his was the popu-

larly elected executive office made him the rallying point for articulate opinion in the State.

The Constitution of 1792 attached prestige to the office of chief executive by making it completely independent of the legislature. This independence, however, was not followed by steady progress in the development of executive power. For the next hundred years the governor's position remained, as far as the fundamental law of the state was concerned, exactly where it was in 1792. The governor was popularly elected for three years with no right to succeed himself under the Constitution of 1792; in 1831 the governor's term was increased to four years. The constitutional revision of 1831 did not alter the governor's power.

During the nineteenth century the dominance of the legislature in the management of state affairs precluded the development of power in the hands of the governor. The General Assembly was engaged in many administrative operations. It granted divorces and issued charters. In concurrence with county commissions it managed the almshouses; supervised indirectly the maintenance of local highways; appointed the state treasurer and auditor who became an officer under legislative control; ran the state house and other public buildings. The legislature was the government. Yet the fact that the governorship was filled on a popular basis tended to force the development of party organization and thus stimulated an approach to party alignment in the law-making body. Until 1897, however, the governorship was but an embryo of the present chief magistracy of the State. Any other conclusion would be an overdressing of the facts. Countyism and intense local jealousy precluded the growth of a strong executive in Delaware during the entire nineteenth century.³

It was not until the social and economic patterns of the State began to change with the approach of the twentieth century that alterations in the executive branch of state government began to appear. Demand for a system of identifiable responsibility whereby state administration would become more accountable was voiced. It was this demand that brought about the most absorbing question to face the constitutional convention of 1897; namely, whether the rural areas would agree to the reposing of governmental power in an executive who would be elected by a popular majority. Intense local bias ran throughout that convention. The fear of a strong governor, owing his election to the populous northern section of the state, confronted the partisans of the downstate area with a basic dilemma. The rural areas themselves knew the need for a centering of administrative responsibility especially in the conduct of fiscal affairs in the hands of the executive branch, yet with the placing of such responsibility would go authority. If this authority were to repose finally in a popularly chosen governor, then the political power of the rural areas would tend to decrease because of the relative sparseness of their population.

Many rural delegates were suspicious of any attempt to place any

administrative control whatever in the hands of the governor. Some of them would not let themselves believe that a popularly elected chief executive might conceivably have "sufficient legal training to enable him to pass upon the constitutionality of legislative act" through the use of the veto.⁴ Many delegates could not admit that public policy should be either formed with the aid of the governor or executed under his direction. Others were willing to grant that "administrative policy would be that of the governor,"⁵ but they wished it hedged about with legislative controls.

It was finally determined that the executive power was not to reside with the governor. Instead of being the only popularly elected state administrative official, he was to be flanked by five other executives. The attorney general, heretofore appointed by the governor, was to be elected, as were the state treasurer and auditor. The office of insurance commissioner was provided for, and the lieutenant governorship was created. Thus the governor was surrounded by a battery of elective constitutional officers clothed with the power of administration. "Supreme" executive powers were vested in the governor, but nowhere was the meaning of this phrase made clear. He could require information from the executive departments, but none of these were made responsible to him. Incongruously, the constitution, while giving five other officials independent status, placed the responsibility on the governor for the faithful execution of the laws.⁶

GENERAL CHARACTERISTICS OF THE OFFICE

Qualifications

The qualifications of the governor are of two types: the formal qualifications established by the constitution and the informal ones established by the requirements of practical politics. The present constitution requires that the governor shall have been twelve years a citizen of the United States and, prior to his election, six years a resident of Delaware, unless he shall have been absent on public business of the United States or of the State. He must be thirty years of age. These requirements of age, citizenship, and residence are so easily met that few persons who would be seriously considered anyway would be disqualified.

Nomination and Election

In their practical effect, the extraconstitutional requirements are far more important than the formal in the selection of a governor. There is little doubt that the increased population of New Castle County has made that area the focal point of gubernatorial politics. To win, the candidate for governor must carry that county. Politics is arithmetic, and most politicians, regardless of their locality, know how to figure. Yet, because of the county dominance of the state conventions at which the governors are

nominated, the downstate areas have a great deal to say in who gets the "nod." There is a subtle insistence upon county rotation. Once it is Sussex' turn, then Kent's, and then New Castle's. Within recent years, New Castle seems to have gotten more than its share of nominees, but an effort has been made to "balance" the tickets of both major parties by having downstate people run for the lesser jobs and for the Federal positions. It is significant that the majority of the gubernatorial nominations within the past twenty years have come from New Castle. This fact is a recognition by the politicians of the voting strength in the northern county.

Family, church, and social position are not as important in gubernatorial selection as they once were. No longer does a man need to be born in the State to run for the top office (although the vast majority who do run are native). Protestants get the nomination, but of recent years men of the Catholic faith have been mentioned as possible material for the chief magistracy. Business men, bankers, lawyers seem to have a better chance than do farmers, but this may be an indication that the State has moved away from agrarianism.

Fundamentally, the nominee must be a man in long and good standing with his party. Nonparty men do not get nominated for the Delaware governorship. Primarily, to get nominated one must be acceptable to the leaders in each of the counties and stand in with the policy committee members.

The governor is chosen for a term of four years by plurality vote of those qualified electors exercising the franchise. He is eligible to be re-elected once. The candidate for governor runs on the same ticket as the party's candidate for the Presidency. (Delaware has dispensed with the placing of the names of the presidential electors on the ballot.) Not all counties follow the same order for the listing of the candidates for the several state offices. In Kent County the name of the candidate for governor comes first, directly after that of the presidential nominee; but in New Castle, the name of the candidate for the United States Senate (if that office is to be filled) leads the state ticket following immediately after the name of the candidate of the Presidency. Sussex has varied its listing.

In recent years there has been considerable "knifing" of lesser line offices in order to gain the election of the gubernatorial candidate. Both parties are susceptible to this type of maneuver whereby party stalwarts are allowed to "cut" the ticket, that is, refuse to vote for party candidates for state office other than the governorship. At times there has been knifing of the presidential nominee by party rank and file. In 1940 the Republican candidate for governor won, but the party nominee for the Presidency lost in the State. In 1948 a Democratic governor was chosen, but Mr. Truman did not carry the State.

The one significant fact concerning the election of a Delaware governor is that the total vote for this office—both parties' votes combined—has

usually been the greatest among the total votes cast for any other office, at times including the vote for the presidency. Apparently the capture of the gubernatorial office is considered highly important among partisans; the reason for this probably being that whatever patronage there is at state level, its distribution will take place through or in accordance with the wishes of this office.

Contested elections for the governorship are determined by a joint committee consisting of one third of all the members elected to each house of the legislature. In the unlikely event of a tie between candidates, the General Assembly elects the governor by joint ballot. If a tie occurs at this juncture, the constitution provides that the president of the Senate casts the deciding vote.

Inauguration of the governor takes place the third Tuesday in January following his election. Along with other public officers he subscribes to the following oath:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of the office of governor according to the best of my ability. And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office.⁷

Compensation

Until recently, Delaware governors were among the lowest paid American state executives. The constitution places no limit on the governor's salary except to say that it may not be increased or diminished during his term of office. The present salary of the governor is \$12,000 annually. He now ranks among the higher paid public servants in the State.

The total amount appropriated to the governor's office in 1953 was \$31,500 out of which came the governor's salary, the salaries of the executive secretary and clerks associated with this office, and incidental expenses. Part of this money was allotted to the expenses incurred by the governor in travelling about the State and in the course of his representing the State beyond its boundaries. The governor is furnished a state car and a chauffeur who is usually a state policeman.

There is no gubernatorial mansion in Delaware, although a movement is currently afoot to provide him with a house in Dover. There is a suite of rooms attached to his office in the legislative hall, which he can use for the limited entertaining of visiting dignitaries.

Disability and Removal

In the event the governor dies or is removed from office, the position devolves upon the lieutenant governor. In the event the lieutenant governor is unable to assume office, the secretary of state is next in line, with the attorney general following. Next in succession are the president pro tempore of the Senate and the speaker of the House.

The governor may be impeached on a two-thirds vote of all members elected to the House of Representatives, and is convicted by a vote of two thirds of all the senators. The chief justice presides at the trial in the Senate; in his absence, the chancellor. As in the Federal jurisdiction, judgment, in case of impeachment, shall extend no further than to removal from office and disqualification to hold any office of honor, trust or profit, under the State; but the party convicted shall, nevertheless, be subject to indictment, trial, judgment and punishment according to law. No Delaware governor has ever been impeached.

THE GOVERNOR'S OFFICE

Constitutional Position

Although the formal authority of the governor is severely restricted by both constitution and statute, the power of the governor in the political process in Delaware has grown steadily during the past thirty years. The increase in power of the executive has been the result of a need to have a focal point for the integration of supervision over the state administration. Many factors have entered into the aggrandizement of the governor's office, but the fact that Delaware has of late become a relatively complex society has spurred the need for a competent central clearance in the management of the executive branch. With the rapid decline in the legislature's ability to supervise the administrative operations there came a vacuum in the process of directing the administration. Although the constitution did not place the governor in command of administration, he has been able by informal means to bring a fairly high degree of control over the execution of public policy. By adroit manipulation of this information control the successive governors since 1940 have made themselves the chief political figures in the State.

Governor as Party Leader

The position of influence in the administration attained by the governor has helped make him the leader of his party at state level. Countyism and legislative jealousy of the executive have tended to prevent an adequate degree of cohesion within the party in control of the government. To offset this the governor has served as a rallying force for the party faithful

and those non-partisan elements necessary for victory at the polls and for the successful prosecution of an administration program. The governor has become the symbol of his party, and he is the focus of the forces tending toward party cohesion and harmony.

Although there is no extensive patronage directly under the authority of the governor, his appointees do have the opportunity to name party workers to many public positions. The clearance for most of these jobs rests with the governor's office, and although this fact might seem to aggrandize his power, it can also become a serious obstacle to the exercise of his leadership. Disappointed office-seekers may readily vent their ire upon him personally, and rifts in party solidarity might be the result. Part of this may be alleviated if the governor has a strong intermediary between him and the party hopefuls who can act as a buffer to prevent the pressures from mounting against the gubernatorial office. Sometimes the secretary of state serves in this capacity. Unless the governor has such a man he is quite apt to be swamped by the piddling demands of party followers to the extent that he is precluded from exercising real political leadership.

Although party cohesion can be aided by adroit use of the executive patronage, this cohesion cannot be employed as a whip over the legislature. The electoral arrangements in Delaware are such as to allow an inordinate amount of autonomy to the locality in the selection and election of the General Assembly. The constitution requires that monetary aid to private and municipal organizations have a three-fourths vote of all members of the legislature. This provision makes it possible for a few of the members to hold up regular legislation by playing interest groups against that part of a party program that does not have those legislators' approval. No governor can insist upon party regularity in face of determined opposition on the part of even a few dissidents in the legislature. Rather there must be a careful working over of proposals by governor and legislature. This is often done in caucus. Here, by proper swaps and trades, the governor will be able to effect cooperation, but at a price. Usually the price is the giving in to certain legislators in respect of their pet bills.

In close support of the governor's prestige as a factor in executive control over legislative activity is the role played by the governor in the inner core of party. Of recent years, the governors have moved into dominating positions in their parties. The chief reason for their control appears to be their vote-getting ability. Recent governors have been popular men. As the two parties pull closer together in electoral strength, the need for a popular candidate to head the ticket is evident.

The Functioning of the Office

The people of Delaware are looking more and more to the governor as the means of implementing their varied desires and demands. In the north this role of the governor has particular importance because the masses need

a champion to whom they can voice their often disorganized wishes. The governor serves to give these wishes coherence; through his efforts they may be translated into public policy.

The Delaware governor's office has always been open to all of the citizenry, and the general complaint of every occupant of that office is that his time is spent largely in meeting people day in and day out. It is not at all unusual for the governor to meet a dozen or more people each day who bring personal requests of a highly private nature to his doorstep. It might be a group of citizens from Claymont (an unincorporated area in upper New Castle County) seeking a stop light to ease the rigors of traffic in their neighborhood. Again it might be a civic organization from one of the Wilmington wards seeking to have a certain street paved or the through traffic rerouted. Chicken cooking contests (symbolic of the State's prominence in the broiler industry) and attendance at county fairs, take up part of the governor's lighter moments. Attendance upon meetings of citizen affairs, administrative agencies, and with state officials consumes an inordinate amount of the chief executive's time. There is hardly a day that the governor's presence at some civic effort is not mentioned in the press.

The need for top executive decision making is placing too great a pressure upon the governor for him to continue to act as a patriarch. Not only will he have to delegate much of his ceremonial activity but he also must acquire adequate staffing to aid him in the pursuit of the more vital work of governing.

Staff Aids

The present assistance furnished the governor consists of the secretary of state, who in many respects is his right hand man, a private secretary and several clerks, and an administrative assistant. The latter official is meant to serve as liaison between the governor's office and the several state officials and the legislature. His job is highly political in nature, and unless he has the magic touch of a good politician he is well-nigh worthless to the governor. He does not handle patronage and he must not interfere with the secretary of state if that official acts as the distributor of patronage for his party. In a disparate administrative organization such as Delaware's there is vital need for some top official directly responsible to the governor who can see that the governor's ideas are accurately conveyed to the administrative agencies.

In departments having central control such as budget, accounting, purchasing, engineering, and personnel—what is known generally as "organization and methods"—there is crying need for a top official who can tie in these devices and make them aid in effecting the gubernatorial program. Some suggestions have been made recently to place building and grounds administration and central purchasing under the secretary of state and have that officer act in a supervisory position. The difficulty in that proposal is

that the secretary of state is primarily a political officer and often has party responsibilities that prevent his acting as a state controller. At present Delaware does not appear large enough to require the establishment of a department of administration although if the current economic and social trends in the state continue that may be an eventuality. Before any real centralization can take place a forthright merit system for recruitment and employment must be set up.

EXECUTIVE POWERS

The executive power does not rest exclusively with the Delaware governor. He is the "supreme" executive, but the adjective betokens restrictions upon his authority over the executive function. The Constitution and statutes, however, permitted the development of a framework of gubernatorial authority, within which the governor has been able to forge a pattern of control in the governance of the State. Revision of the constitution in 1897 extended his authority over appointments. Beginning in 1921 the statutes have gradually imposed fiscal responsibility upon the chief executive. By careful attention to the needs of centralized control over the administration the governors themselves have been able to achieve a decided amount of general supervision over the state administration.

Appointment and Removal

In the early sessions of the constitutional convention of 1897 there was a concerted effort to limit the gubernatorial power of appointment to the naming of those officers working directly with the governor. Some members of the convention would have given him the right to appoint only the secretary of state; others would have taken "every particle of appointing power out of his hands."⁸ Several members wished to restrict the governor's appointive power by making its use subject to senatorial confirmation.⁹

Much of the antipathy toward the extension of executive authority through use of the appointive power was voiced by the downstate representatives. They claimed they had been specifically enjoined from granting any right to the governor to name public officials. Some members from Sussex and Kent stated they had been admonished by their constituencies to direct "the whole of their conversation to the effect that the list of state officers should be elected by the people and not selected otherwise."¹⁰ As a counter to this attitude there was a decided effort on the part of the northern representatives, especially those from the city of Wilmington, to provide for a chief executive with complete authority over administrative appointments.¹¹

Eventually a compromise was effected with the result that the governor was given the power to appoint without senatorial confirmation all officers whose salary, fees, and emoluments did not exceed \$500 each year.¹²

Thus the possibility that a governor might build a personal political machine out of appointments to well-paying jobs whose holders would be directly responsible to him was technically precluded.

The power to remove should be concomitant with the power to appoint, but this has not been the case in Delaware. Prior to 1897 the Delaware governor did not enjoy the right of removal, and the Constitution of 1897 did not change this situation in any appreciable degree. The confinement of the power of the governor in this respect is the result in part of the fact that much of the public administration in the First State during the nineteenth century was performed at local levels. Health, education, and police administration was carried on in the towns and to some extent at the county level. As state-wide government spread, there was a tendency to retain the old local administrative form of boards and commissions. The state boards and commissions were made up of representatives from the localities. Giving the governor the power to remove agency members would have destroyed the representative character of these officials. Yet, there was recognition of the need for some supervision over the work of these boards and commissions. Dereliction in duty was not to be countenanced. Inefficiency in face of modern need was not to be brooked. Dismissal for reasonable cause seemed in order, but how was the dismissal to be accomplished. One delegate, later to become a distinguished member of the state's judiciary, contended that "the governor cannot remove except a man be convicted, unless it be upon the address of the General Assembly."¹³ This view seems to have been the consensus of the convention inasmuch as Article XV of the present constitution states that a governor shall remove any public officer "convicted of misbehavior in office or of any infamous crime." Thus the governor was to have no discretion in the matter. He was to act as a means of executing a judicial sentence, not to aid in the formulation of that sentence. The courts have moved in line with this thinking by holding that the removal power rests primarily with the legislature. The legislature may, however, *delegate* this power to administrative and executive officers, it may repose this power in the governor with the right to take it away from him at pleasure.¹⁴ "No constitutional inhibition exists against the creation of a statutory office to be held during the pleasure of the appointing power."¹⁵ In arriving at this conclusion, however, the court did not think it a wise thing to give the governor discretion over removal. Legal and political thinking in Delaware has been consistently opposed to having power rest with the State's chief executive.

This concept has not sat well with most of the governors. In his last message to the legislature in 1917, Governor Miller stated that "experience satisfied him that there could be no reasonable guarantee that appointive officials would faithfully and honestly perform their duties unless the governor were vested with the right to remove."¹⁶ The lack of removal power was keenly felt by Governor McMullen. In a peremptory challenge to the

legislature in his dismissal of certain officials in the Highway Department in 1937, he precipitated one of the most absorbing legal battles the State has seen in recent years. In spite of the gubernatorial strictures against the prevailing attitude of legislature or court respecting the removal power, the fact remains that the power to remove does not rest with the Delaware governor.

Members of only three of the eighty state agencies serve completely at the governor's pleasure. Each of these commissions has only advisory powers. The members of four licensing boards are removable with the *concurrence* of professional societies that recommend their appointment. In the case of the State Tax Commissioner the state senate must join in the removal.

Fiscal Powers

Formal control of administration cannot be said to rest with the governor. Constitutional provisions establishing elective positions for the attorney general, the treasurer, insurance commissioner, and auditor place the governor in the role of symbolic leader surrounded by a group of equals. He is but the figurehead of the ship of state if one looks only to the constitutional framework in which his office operates. Although the governor must see that the laws are faithfully executed, the chief law enforcement officer of the States owes him no responsibility.

The gradual assumption of administrative power is, however, not denied the governor. Although it is true that such authority must be handled in an informal manner, it is possible for the chief executive to expand his control over the administrative process. This expansion has been effected by his gaining fiscal powers. As the increase in governmental participation in business and social activities occurred, a veritable welter of regulatory administrative agencies sprung up. The need for over-all control of this topsy-like structure appeared. The splintered executive envisioned by the constitution did not lend itself logically to the management of this myriad of bureaucratic offices. Although the constitutional authority over these groups rested with the legislature, that body became unable to exercise anything but a very general supervision over them. Along with the need for administrative supervision there arose the necessity for centralized fiscal control. It is at this juncture that the demand for a strong executive authority appeared.

Although compelling forces were driving toward the concentration of fiscal authority in the hands of the chief executive, the governors between 1920 and 1940 were loath to avail themselves of this opportunity to stretch their influence over the administrative agencies. In fact, several of the governors during this period were personally opposed to having their office in control of financial operations. One governor, C. Douglass Buck, is on record as opposing the placing of budgetary power with his office.¹⁷ An-

other governor did not approve the reposing of fiscal control within his office, although he was convinced "greater efficiency and economy" should be practiced among the administrative commissions. He advocated the forming of the budget commission, but he did not want the final authority and responsibility for the drafting of the budget to rest with him.¹⁸

The steady pressure against the continuance of outdated fiscal methods, however, brought with it the demand on the part of business elements that the governor assume direction of the budget and the supervision of expenditures. The movement for a rigid control over expenditures resulted in placing the fiscal operations of the state agencies under the supervision of a central executive authority.

Technically, the governor does not have sole control over the budget. The Permanent Budget Commission, formed in 1939, is composed of the governor, the secretary of state, the tax commissioner, auditor of accounts, and the state treasurer. The secretary of state and tax commissioner are gubernatorial appointments, however, and this fact gives the chief executive the balance of power in the decisions of the commission.

Fiscal power, however, is not enough to insure administrative control. The governor has had to seek additional means to extend his authority over the agency system. It has been through the development of informal arrangements that the governorship has come to a position of dominance in state administration.¹⁹

General Powers of Supervision

The story of the informal controls exercised by the governor in his gaining power over the administration is too involved for detailed statement in a general survey. Suffice it, therefore, to note that by working directly with the executive directors of the various commissions and boards, the governor has fashioned means by which administrative problems can be brought to his attention for solution. Although the executive directors of the administrative agencies are adjuncts to and appointed by the commissions, it is the executive director who actually operates the agency in most instances. It is the executive director who knows the problems besetting modern administration, and it is this officer who often welcomes someone with whom he can air his difficulties and seek advice concerning proper management procedures. By offering a focal point for common discussion of administrative situations the chief executive has gained a knowledge of administrative performance and the details of agency operation, which have enabled him to discuss at first hand the needs and limitations of administrative action throughout the entire state.

By organizing an informal council known as the Council of State Executives (composed of the executive directors) the governor since 1941 has associated himself with a core of administrators who look to him for guidance and a fair consideration of their requests when the budget is

drafted. It is through his control of the budget that the governor can wield power over the agencies, and thus he can make a direct appeal for the earnest cooperation of the directors, who recognize most keenly the need for adequate funds to carry on their endeavors. Furthermore, by working closely with the state auditor, who has the power of the pre-audit, that is, the examination of proposal to spend before the obligation is made, the governor has the means of preventing those administrative activities entailing financial obligation that are contrary to his intentions as conceived through the budgetary provisions. Cooperation by the auditor is, of course, on an informal basis, as that officer is an independent constitutional official and does not have to aid the governor in checking the fiscal activities of the several agencies. Energetic governors, therefore, can develop a spirit of unity among the agency executives, which, if properly directed will lead toward the establishment of a cohesive administrative system. Much, therefore, depends on the type of person in the gubernatorial chair. If he senses the need for close cooperation between his office and the numerous administrative groups, he will make use of the informal controls that lie at his disposal. No governor of Delaware can complain that he is totally unequipped to fight the modern battle for executive supremacy in state administration.

Military Powers

One subject yet remains for discussion under the executive powers of the governor. This is his authority as commander-in-chief of the military operations and general defense of the State. The constitution makes him top military officer in the State with respect to its militia, except when the organized militia is called into the service of the Federal government.²⁰

The Delaware National Guard has had a most distinguished career. "Fighting Cocks of the Blue Hen" or more locally known as the "Blue Hen's Chicks," the organized militia of the First State has fought from Princeton to the Pacific. The governor as commander-in-chief of the guard serves with the adjutant general (whom he appoints) and with the ranking commander in the field as the State Military Board. The board's functions are concerned with the use of land given for military purposes to the State. It also supervises the erection of state armories.

In addition to his authority over the National Guard, the governor also commands the State Guard, an auxiliary military unit which is organized on a ready basis whenever the National Guard is called away on Federal duty. The State Guard is concerned mainly with home defenses. It is inactivated when the National Guard is at home.

The constitution does not specifically provide the governor with the power to declare martial law. It does say that the writ of habeas corpus may be suspended in case of rebellion or invasion, but it does not specify by whom it shall be suspended. The governor, of course, is enjoined to

see that the laws are faithfully executed, and this injunction may give him the right to use the organized militia or to call the general militia to arms if open conflict occurs in the State. No Delaware governor has ever resorted to the militia for such purpose. The writ of habeas corpus has never been suspended. Martial law has not been declared in the State, although during the Civil War certain areas were subject to the authority of the Federal troops. By statute, the governor is authorized to call out the National Guard when lives and property in the State are in imminent danger from invasion, epidemic, or breach of the public peace.

In 1950 the Congress created the Civilian Defense Organization; the states have been given the right to supervise the operation of this group within their own boundaries. The head of the civilian defense in Delaware is appointed by and can be removed by the governor. There is an advisory council that aids the governor in familiarizing himself with civil defense problems, although the administration of civil defense in Delaware is conducted with a considerable degree of local and county autonomy.

LEGISLATIVE POWERS

The governor furthers his legislative program by means of three constitutional prerogatives as well as by a variety of extraconstitutional and informal means. The first constitutional method is through formal messages, regular and special. The regular messages are given at the beginning of each biennial session. The second is through the use of the veto power, either of an act or an item in an appropriation bill; the third is by convening the legislature in special session and making known before hand the agenda which he would like it to adopt. Then, in addition, there are the important informal and extraconstitutional powers of the governor, which derive largely from his position as party leader and his influence in the party caucus if his party is in the majority in the legislature.

Messages

Concerning the governor's messages, it may be contended that these are for public consumption but have little effect upon the solons. Yet, if one were to peruse the lists of gubernatorial demands presented to the several legislatures over the past twenty years, he might be surprised to find serious attention being paid by the members of the General Assembly to the items listed.²¹ Even in the cases where there is a difference between the party in command of the legislature and that of the executive, the lawmakers await avidly the suggestions of the governor. Approximately four out of five suggestions made by Democratic Governor Carvel in 1949 were given effect by the Republican General Assembly within the course of the succeeding four years. The high rate of turnover occurring in the Delaware legislature makes the maintenance of a continuing legislative program

almost impossible. Each new group of legislators comes to the forum with a confused mass of proposals sponsored by the individual members. These proposals reflect usually the pet ideas of the several lawmakers or are part of larger programs initiated by well-organized interest groups. To this welter of proposed law, the governor's message acts as a sort of catalyst tending to clear much of the dross from the legislative firing pot.

The messages of the governors before 1920 attacked broad problems in a general if not platitudinal manner mentioning usually that better schools must be provided, better highways must be constructed, and that lower taxes had to be achieved. Recent governors, however, have singled out particular subjects within the general areas of state legislation and have dealt in a positive manner with these subjects.

Some messages of the governor are intended as trial balloons for public consideration. Strong reaction, one way or the other, to their contents helps set the course of executive-legislative action.

When the governor feels the need, he may resort to a special message; he may present detailed recommendations with respect to particular fields of legislation in his special message. On an average there are about two each biennium.

In addition to informing the legislature on affairs of state, the governor is directed by statute to furnish the House and Senate, within five days after they are organized, with a printed estimate of the State's financial receipts and expenses. Chapter 9 on state finance contains full reference to the presentation of the executive budget. It is well to note here, however, that more detailed information of state finance is given the legislature in the budget message than by any other means. The unfortunate aspect of the budget in Delaware is that it is not of the performance type, that is, it does not include a description of the use of the expenditure. There would be decided improvement in executive-legislative relations if the governor were to incorporate in his budget message full language sheets specifying the uses to which his recommended expenditures would be put. Often, suspicious legislators look with jaundiced eye upon executive proposals because of the seemingly large expenditures allegedly connected with these proposals. If the monetary details in the budget were to be immediately related to the activities they cover, a great deal of misunderstanding between governor and legislature would be eliminated.

Veto Power

The present constitution was the first to grant the Delaware governor the power of the veto. Legislative preeminence and the local fear of centralism had prevented any surveillance by the chief executive of statute law-making. The debates in the convention of 1897 give ample evidence of the feeling against gubernatorial participation in the law-making process. If it had not been for a series of abuses by the General Assembly in passing

hasty and ill-considered legislation, it is doubtful if 1897 would have seen the granting of executive veto.²² At no time in the debates did the majority believe that the governor should have the power to *defeat* legislation but rather that he should have the power to *force its reconsideration*. The belief that he should have this latter power was the reason for permitting re-enactment over his veto by a three-fifths' vote of the entire membership of both houses rather than the usual two thirds.²³ It was not considered correct for the governor to pass upon the constitutionality of proposed law.²⁴ If a bill were unconstitutional the courts would so declare it. Any effort in this direction by the governor was usurpation of judicial power, and no governor was thought to be capable of exercising legal thought. Later legislation that permitted the governor to call upon the court for an advisory opinion as to the constitutionality of a bill which he had before him,²⁵ appears to be a withdrawal from this extreme position.

It was the experience of Pennsylvania and New York with the item veto over appropriation bills that brought about the addition of that idea to the concept of the veto power in the First State in 1897. From the record of the constitutional debates, it appears that the item veto was meant to offset the tendency of the legislatures to appropriate funds without great reflection whenever strong pressure groups applied their influence.

Many of the businessmen of Wilmington whose products were often subject to excises (which were then one of the chief means of raising state revenue) desired to prevent legislative extravagance. The industrial and commercial leaders of the northern section of the State also were afraid of an increasingly large state debt, which might have a tendency to drive away business. They felt that a governor, who in some cases might owe his nomination and election to their efforts, would reflect their wishes in the matter of economy and thus serve as a check against the extravagant use of the spending power and the power to incur debt.

Oddly enough, with the granting of the veto power to the executive, his right to pass upon constitutional amendments (which under the law of 1831 was an absolute veto) was taken from him.

Because of the legislature's penchant for holding up the passage of many of the important bills until the last days of the session, the governor has a great deal more power over legislation than cursory reading of the veto provision would lead one to infer. Veto can be overridden if three fifths of each house concur. The governor has ten days, Sunday excepted, to return a bill if the legislature is in session. Bills may become law without signature if he holds them longer than ten days while legislature is in session.

The general appropriation bill, as a rule, is held over until the closing days of the legislature meeting. As a result, the governor can weigh the appropriation items at leisure and veto them any time within thirty days after legislative adjournment. If he does not approve of any bill before

him within thirty days after adjournment, the measure fails to become law. Usually, most vetoes occur during this period. Thus owing to its delaying action the legislature has tended to place even stronger power in the governor's hands than the constitution intended. It is not unusual for at least one quarter of the legislation of a session to lie on the governor's desk after adjournment. Through his power to veto either a whole bill or any part of an appropriation bill, the governor of Delaware now holds a sizable whip over the lawmaking process. The governors of recent years have not been loath to use this whip.

TABLE 7
EXECUTIVE VETO IN DELAWARE, 1943-1955

<i>Year</i>	<i>Number of Full Vetos</i>
1955	49
1953	8
1951	10
1949	37
1947	19
1945	21
1943	3

Yet less than one out of thirty bills is stopped. Few vetos occur on general public bills. Most vetos are used with respect to local bills such as appointment of an oyster warden for a specific waterway in Sussex County, or an act requiring the erection of a traffic light in one of the towns.

Much of the power of the veto is felt indirectly in the threat to use it, and it is in the caucus and in the sessions of the screening committee that the governor's wishes respecting legislation appear. The legislative leaders generally know beforehand which bills have a chance for passage. If the vote is close on a particular bill it is useless to pass it if the governor is opposed.

The veto, coupled with his political prestige as party leader, has helped place the governor slowly but surely in the driver's seat in respect of the determination of public policy. It should be noted, however, that if there is a preponderant majority of the opposition party in the legislature, the use of the veto by the governor is futile.

Special Sessions

One means employed by the chief executive in effecting contact with the legislature is that of calling the lawmakers into special session. He may do this by convening both houses for consideration of general legislation, or the Senate to consider executive business, which usually has to do with appointments to the judiciary. Prior to 1951, when convening the Senate

for the purpose of confirming appointments to the judiciary, the governors generally did not make known to the public the nominations they submitted. This procedure caused widespread criticism inasmuch as it did not give the senators or the public sufficient time to weigh carefully the naming of a man to a state court. Governor Carvel made it a practice during his term to announce in advance the nomination he was presenting to the senate.

In convening a special session of the General Assembly, the governor states in his proclamation the reasons for calling the session, thus providing an agenda for legislative action. Yet he may not bind the legislature to just the consideration of his agenda. The lawmaking body, once called, is free to act in whatever way it pleases upon any subject within its authority. The legislature convened in special session is master of its work, provided the two houses remain in session and can muster sufficient strength to overcome a veto. Under the constitutional provision respecting legislative pay in force before 1947, a special session meant extra compensation for the members. Now they receive an annual stipend irrespective of the number of days of meeting. By remaining in special session beyond the time needed to consider the request of the governor, the legislators are, therefore, only spiting themselves if they seek to prolong their sitting.

Although special sessions are sometimes called because real problems have arisen, they are also called, on occasion, to deal with such trivial matters as enacting an appropriation to a defunct ferry company in order to compensate for alleged losses resulting from the erection of a bridge across the Delaware River. At times, the lawmakers have been called back to Dover to meet problems arising from pressure group demands. Special sessions have been used as a means of executive discipline exercised against the legislature.* Once convened, however, the General Assembly has the reins, and governors are wary of over using this method of bringing the legislature to book. Within the past ten years there have been five special sessions, and in each case the need therefore was generally agreed by legislators. The power of the governor to call special meetings of the legislature is one of his less potent weapons in dealing with that body.

Extraconstitutional Powers

It is extremely difficult to pin-point the informal influence of the governor over the legislature. In addition to the formal controls given him by the Constitution and statutes the governor has developed powerful

* In 1934 the Senate refused to concur in a relief bill with the House and the result was a complete disregard of an executive demand that the bill be enacted. The House adjourned for more than three days and the governor adjourned the Senate. However, as gubernatorial adjournment is good for only three months, both houses were back in session at the expiration of that period and the governor's wishes continued to be disregarded.

means of bringing the solons into line. The fact that great turnover takes place in the legislature robs that body of entrenched leadership. The fact that the governor is daily before the people and the press while the legislature sits only six months in a two-year period permits the executive to keep abreast of public affairs. He uses this knowledge and the experience of his position to bring public opinion to bear on public problems. Also, by close association with the administrative groups, he can use their connections with pressure organizations to light a neat fire under recalcitrant legislators. There is danger in this of course because he might arouse the legislative ire and get nowhere. Adroitly handled, however, these behind-the-scenes moves can get pressure applied in the right places at the right times.

Another informal weapon of the governor is the feeling that the businessmen of the State have that he is their champion, that he will act to prevent the excessive spending that might be desired by local representatives. He is not the soul of economy, but he is the one best bet to watch the public pennies. It is the power of the fisc that aids him most in promoting his program. The chief executive can travel around the State and visit the local clubs, firemen's organizations, and civic groups. These meetings are usually social affairs, and great pleasure is derived from the governor's visits. The people like to have him with them. Careful exploitation of this situation can help the governor develop a strong sympathy and support from the very citizens who might be urging their representatives to get some local undertakings approved. People are made to feel free to bring their complaints directly to the governor, and thus the local representative is often by-passed. This robs the latter of his strong card, for if he does not speak for his constituency he does not speak at all.

Great study needs to be made in all states of the informal means employed by the chief executives in dealing with their party and the legislatures. Perhaps in a small state like Delaware the data in this area can be more readily gathered than in a larger commonwealth where the ramifications of personality, prestige, and position are less easily discerned.

EXECUTIVE CLEMENCY

The judicial power of the Delaware governor consists of (1) limited control over the extension of clemency, and (2) control over extradition. The pardoning power of the governor is severely limited in that he may not reprieve for more than six months or commute any sentence without the recommendation of the Board of Pardons. The Board of Pardons consists of the chancellor, the lieutenant governor, the secretary of state, the state treasurer, and the auditor of accounts. The governor is not required by the Constitution to accept a recommendation, but he is bound by custom to do so. In the matter of reprieves, it is questionable whether

the governor, in lieu of a recommendation from the Board of Pardons, could continue to extend a reprieve for an additional six months and so on. He must, in granting a reprieve, set forth the reasons in his official register and present same to the next session of the General Assembly.

Under act of legislature, a Parole Board, appointed by the state judges, handles all paroles of prisoners. The governor has nothing to do with this operation. By placing the Parole Board within the judicial system of the State, the General Assembly has sought to treat the granting of parole in a manner similar to the way in which probation is handled. At the present writing, much room exists for improvement in the administration of both parole and probation.

NOTES

¹ Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis 1947), I, 110-112.

² Paul Dolan, *Organization of State Administration in Delaware* (Baltimore: The Johns Hopkins Press, 1950), p. 50.

³ See statement by Governor Ross respecting the simplicity of the governorship in Delaware in his "Message to the General Assembly," January 2, 1855, in *Collected Messages of the Governors of Delaware*.

⁴ *Debates in Constitutional Convention in Delaware, 1897* (Dover, 1897), II, 668 ff.

⁵ *Ibid.*, II, 732 ff.

⁶ Constitution of Delaware (1897), art. II, sec. 17.

⁷ Art. XIV, pars. 2 and 3.

⁸ *Debates . . . 1897, op. cit.*, V, 3495.

⁹ *Ibid.*, II, 777.

¹⁰ *Ibid.*, III, 1023, 1927.

¹¹ *Ibid.*, III, 973.

¹² Constitution of Delaware (1897), art. III, sec. 9.

¹³ *Debates . . . 1897, op. cit.*, XIII, 7905.

¹⁴ *Collison v State*, 39 Del. 468 (1938).

State v Wise, 200 At. Rep. 418, 421 (1938).

¹⁵ Reed, *op. cit.*, p. 486.

¹⁶ Message of January 2, 1917, in *Collected Messages of the Governors of Delaware*.

¹⁷ Message of January 6, 1931, *Collected Messages . . . , op. cit.*

¹⁸ Message of Governor R. C. McMullen, January 3, 1939, *Collected Messages . . . , op. cit.*

¹⁹ Paul Dolan, *Organization of State Administration in Delaware* (Baltimore: The Johns Hopkins Press, 1950), ch. 6.

²⁰ Art. III, sec. 8.

²¹ *Wilmington News*, February 20, 1951.

²² *Debates . . . 1897, op. cit.*, II, 670.

²³ *Ibid.*, 671.

²⁴ *Ibid.*, 556.

²⁵ *Revised Code of Delaware* (1953), Title 10, sec. 141.



CHAPTER 7

Administrative Organization

SOME STUDENTS of government in the United States have contended that the administrative operation should be discussed apart from the general subject matter of politics. Others, among them, Professor V. O. Key, Jr.,¹ hold that politics and administration are meshed inextricably, and a discussion of the latter without a clear understanding of the political basis upon which it rests is unrealistic. This author is in agreement with the view of Professor Key. The following analysis of the administrative arrangements in Delaware, therefore, will have as its general frame of reference the political realities of the State's government.

Administration is but one aspect of total governmental process. That it sometimes appears to be capable of treatment apart from the hauling and pulling of politics is at once an illusion and a snare for the unwary. For example, administrative reorganizations of state government have all too often been under the direction of those who lack either the wit or the desire to relate their efforts to the broad sweep of political forces. Several attempts at administrative reorganization in Delaware have been highly rationalistic and unrelated to the political factors. Before we discuss these attempts it might be well to depict with some detail the development of administrative arrangements that has taken place in the First State.

CONSTITUTIONAL BASES OF THE ADMINISTRATIVE PROCESS

Turning first to the constitutional bases upon which the administrative process rests, we note that the pattern of formal administration has

changed little since 1897. In fact, traces of the administrative machinery spelled out in the Constitution of 1792 still remain. The governor, the secretary of state, the attorney general, and treasurer were mentioned directly in that constitution, and the position of auditor had been created by the legislature at an even earlier date. In making the governor the only officer elected by the people, the Constitution of 1792 gave him a chance to exercise an indirect control over the administrative operation. This power was partly diminished by the provisions of the fundamental law of 1897, which made the other executive officers elective.

Between 1792 and 1897, there were but few changes in administrative arrangements. The Constitution of 1831 did not extend to the governor the power of removal over administrative officers. Effort was made in the convention of 1831 to transfer the accounting controls of the auditor to the secretary of state; this transfer would have indirectly given accounting to the governor because of his authority over the secretary of state. The move failed.

Between 1831 and 1897, the date of the present revision of the State's basic law, little was done either by constitutional amendment or statute to change the administrative organization. It was not until the development of industry and attendant increase in the population of the northern part of the state that demands for alterations in the administrative organization arose. In the early 1890's insistence that a responsible administrative organization be set up began to appear. Under the Constitution of 1831, the General Assembly had been engaged in many administrative operations. It granted divorces and issued charters. In cooperation with county commissions, it managed the almshouses; maintained the highways; and with the help of the levy courts ran the county welfare institutions. Public management tended to reside at the local level, a reflection of the intense particularism of the state. The growing complexity of the social and economic situation in New Castle County, however, required a broad approach to the problems of governing.

Accordingly, the constitutional convention of 1897 was called, and among its first orders of business was the rearrangement of the State administrative organization. The big questions were how much centralization of authority should take place, and should this centralized authority be concentrated in the governor. The issue was joined early in the convention. On the one side were the downstate, rural elements; on the other were the representatives of business and banking in the north. As we have seen in our discussion of the governor's office, it was decided that sole executive power was not to reside in the governor. He would be one among several elective officers. He was, however, given the right to appoint, without senatorial confirmation, practically all the administrative commissioners, yet these were not responsible to him. Although removal

power was not placed in his hands, there were, however, provisions in the constitution by which he could relieve administrators from office for malfeasance and nonfeasance.²

The failure of the convention to provide the governor with authority to remove administrative officers was a logically correct omission in view of the decision to make administration subject to legislative surveillance. By this decision, the Constitution of 1897 helped set the pattern of the State's present commission system of administration. In the provision for a state agricultural board composed of three members, one from each county, the constitution stated that the legislature could abolish this unit. In establishing a state health board, the convention reaffirmed its acceptance of the commission approach to administration. The courts have confirmed the control of the legislature over the administrative arrangements by holding the agencies responsible to the General Assembly. The power of the General Assembly over the administrative groups was considered to be as "broad and ample" and as omnipotent "as sovereignty itself." The legislature was held to have control over any office it created.³ The legislature, according to the court, is the repository of the legislative power and has full and "unrestrained authority to exercise its discretion in any manner it sees fit in its wisdom or even folly to adopt, to give to offices it creates terms of fixed or indefinite tenure, and to prescribe for removal therefrom according as its discretion would prompt it to provide."⁴ If the General Assembly wishes to delegate its authority over the boards to the governor, it may. The governor is not clothed with any inherent power over the administrative establishment.

Once the decision had been made to have the administrative organization fall within the power of the legislature, it was obvious that the pattern of administrative organization would reflect the attitudes of the legislature, particularly in respect of the idea that all branches of the state government must contain a high degree of county representation. This had always been the traditional approach to government in Delaware, therefore there was little reason to doubt that the assemblymen would follow the well-worn paths when they set up the commission or plural executive type of administration.

FORMAL ADMINISTRATIVE ORGANIZATION

Mere description of the myriad of agencies and the fitting of them into a connected diagram reveal little of the realities of administration. To get at the working organization for policy execution, one has to gain a fairly clear picture of the informal arrangements built up within the formal framework. Yet, before this can be done, it is necessary to know the formal organization. Accordingly, we turn now to the presentation of the formal arrangements of state administration relating their development to

the political and societal concepts of the State. Then with this outline in mind we can observe with some degree of precision the informal patterns which have developed.

The administrative organization of Delaware consists of (1) six constitutional, elective executives—the governor, the lieutenant governor, the insurance commissioner, the attorney general, state treasurer, and state auditor; (2) the secretary of state, who is a constitutional officer appointed by and directly responsible to the governor; (3) the tax commissioner and the state bank commissioner, both appointive officials; (4) several minor appointive officers—the state librarian, custodian of the state house, adjutant general, collector of state revenue, collector of oyster revenue, oyster wardens, boat inspector, harbor master, and the regulators of weights and measures; (5) and some eighty odd administrative agencies called boards or commissions,* most of them plural-membered. The great majority of the members of these commissions are named by the governor without the consent of the Senate. With the exception of the State Board of Health, they can be abolished by legislative act.†

The commission system of administration in Delaware is the result of a long experience of government at the local level. Most of the work of government until 1900 was conducted in the communities. It was largely informal with town councils cooperating with local citizens in arriving at policy and in carrying it out once it was decided upon. Committees consisting of duly elective officers and private citizens often comprised the only administration there was in many of the small towns. This informal, or at least highly irregular, method of administration could not readily meet the needs of an expanding society. Yet there had to be some logical connection between the ways governance had been effected when it was done at the local level and the way it would be conducted on an increased scale at state level. It was most natural, therefore, to continue the committee or commission system in the state administration.

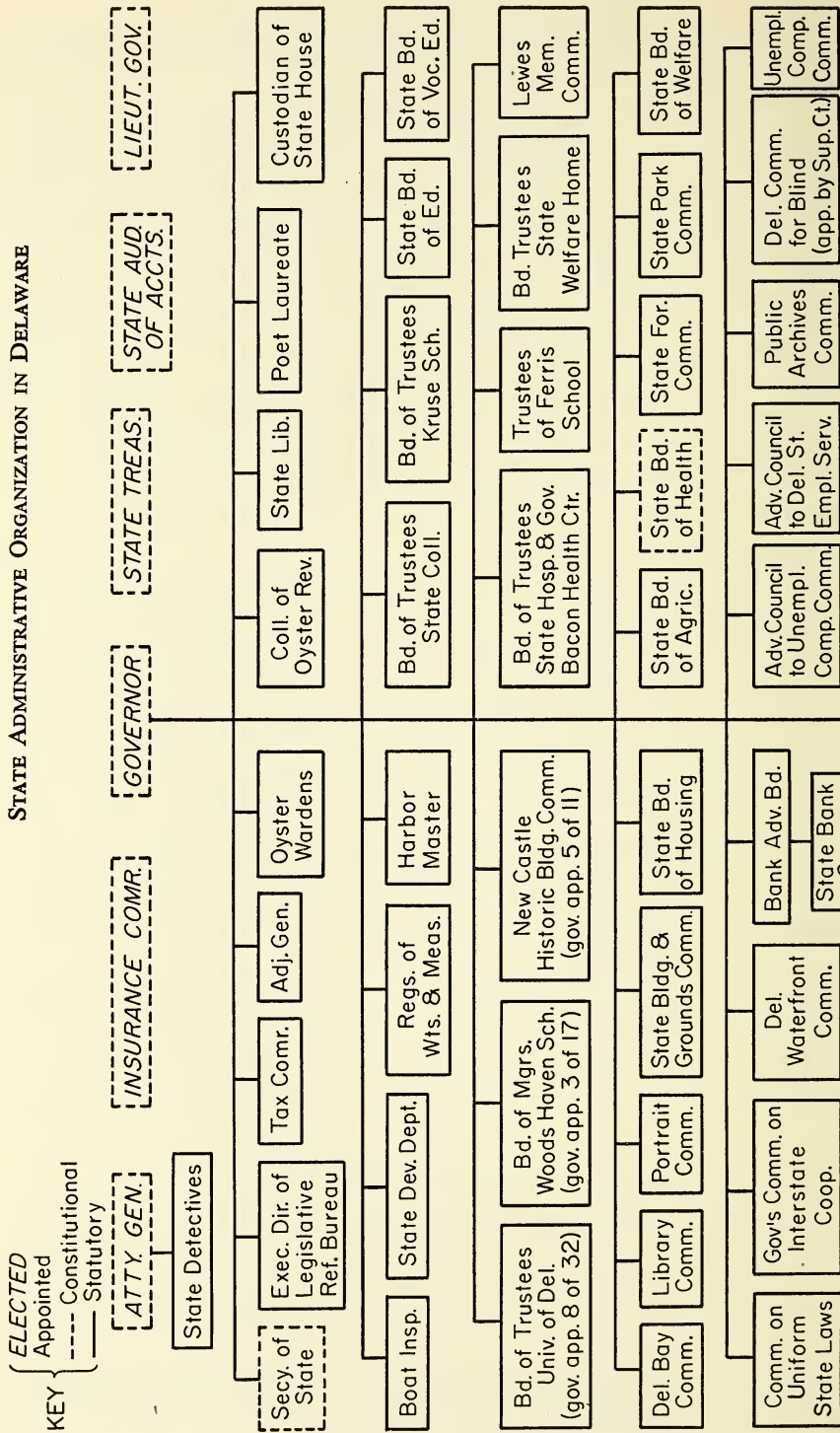
The small number of counties permitted county representation without making the plural-membered commission unwieldy. At first, three persons comprised the usual membership, and then as Wilmington continued to increase disproportionately in population, one or sometimes two members from New Castle County were added. The average number today is slightly over four. Because of the feasibility of an odd-numbered board, there are usually either three or five persons on each commission.

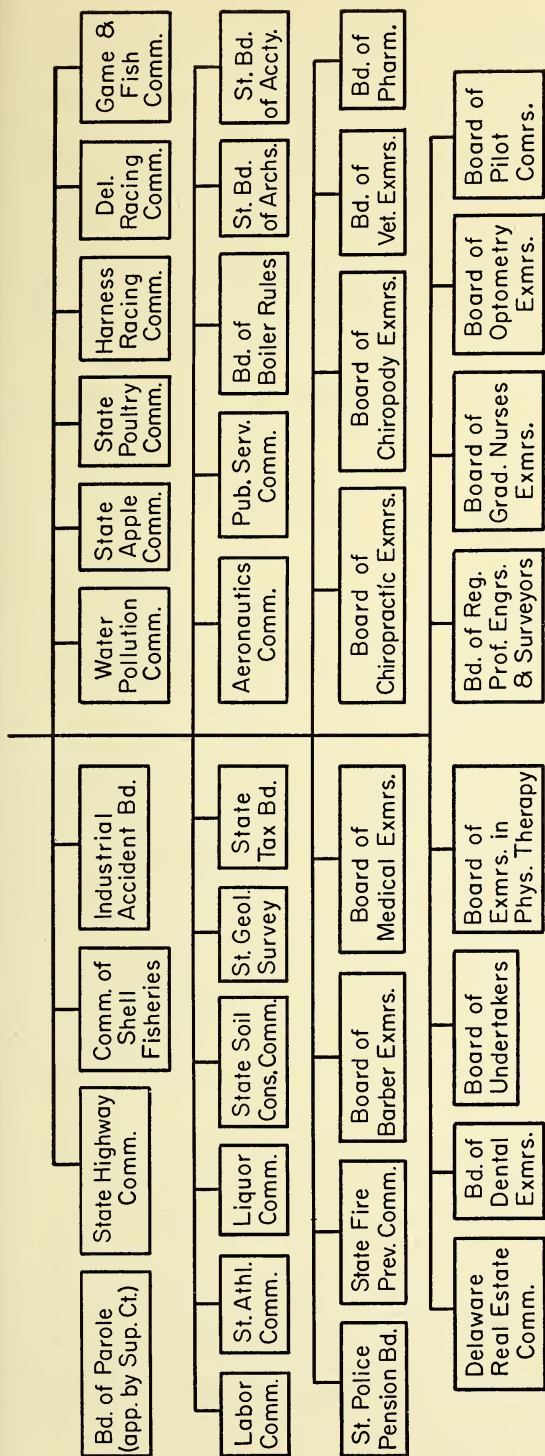
Although the plural-membered commission system reflects the realities of Delaware politics, it is important to remember that when state administration began to expand in Delaware, the commission system was the general order of the day among most of the states. Among many of the common-

* As used in this discussion, board and commission are interchangeable terms.

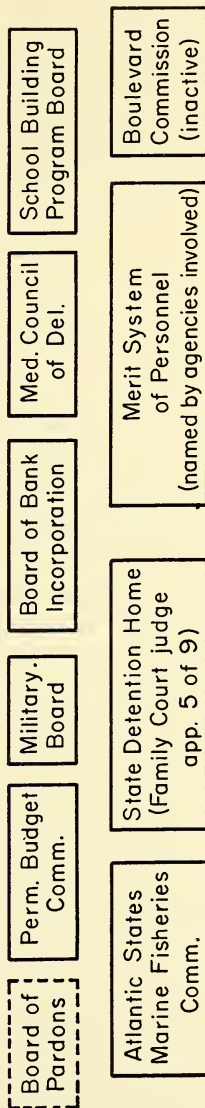
† The state board of agriculture, although established by the Constitution of 1897, can be abolished by the General Assembly. Art. XI.

STATE ADMINISTRATIVE ORGANIZATION IN DELAWARE





EX OFFICIO BOARDS AND COMMISSIONS



wealths at the turn of the century, the vogue for commissions had become a mania. This was also the situation in Delaware. By 1917 there were over 120 boards and commissions in the First State. Not all of them functioned, to be sure, but the vast bulk of administration was carried on by plural-membered boards. Regulation involving the inspection of meats, milk, and bread; examinations to govern admission to certain trades and professions; the administration of such public utilities as roads and waterways; the protection of wild life, of crops, and of oysters; the maintenance of several institutions such as the state university, the home for feeble-minded, and the insane; all these and more were administered by the several state boards.⁵

Although we have emphasized the role of the counties in the determination of the administrative pattern, it is important to recognize other factors in its development. One of the strongest reasons for the rise and retention of the commission system is the feeling in Delaware that public officials should be unpaid.⁶ This feeling is usually present in rural-minded communities. Among the 80 or more agencies operating in Delaware in 1950, only seven were on a salary basis. By far the larger portion of them received nothing more than expenses. Fifteen were able to collect a per diem allotment for their services. This insistence upon voluntarism in administration has been one of the most forceful factors in the rise of informal arrangements among the administrative groups.

One further element in the continuance of boards has been the antagonism of Delaware politicians and administrators to efforts to abolish the commission system and to place in its stead the highly integrated controls sponsored by the experts on state reorganization.⁷ In an interview with the writer, a former secretary of state declared that "administration should not be taken out of the hands of the people chosen by the legislature to do their jobs." He was opposed to have a governor "get control of all the departments since this would tend to place the chief executive under terrific pressure to appoint strictly on a patronage basis." The two ideas expressed by this official, do not necessarily coincide, but his sentiments against a well-knit, integrated system reflect the attitude of many officials throughout the state.

In addition to official opinion respecting the commission system, several special interest groups also appear to be in favor of its retention. The several examining boards and those interest groups associated with them are loath to have the boards lumped under a special services unit such as an "Economic Activities Bureau." Such an agency was proposed by the Griffenhagen Associates when they made their recommendations for administrative reorganization in Delaware in 1950.⁸ Much of the opposition to the Griffenhagen Report came from these special interest groups. The professional bodies are not the only groups that desire the retention of

the present scheme. Many private associations that are closely connected with the welfare and health units at state level bitterly oppose any amalgamation of "their" agencies into a common department. On the other hand, there are organizations such as the Welfare Council of Delaware who bend their efforts toward amalgamation of State welfare agencies.

Neither of the major parties has advocated the abolition of the commissions. There have been constant promises emanating from both parties to eliminate "overlapping functions in administration" and "to cut down on waste," but never has either of the parties ever so much as suggested doing away with the boards. Several of the candidates for governor in the past ten years have asked for greater control over the agencies, but they have never demanded their elimination.⁹ The political facts of life in Delaware preclude such sentiment.

THE ADMINISTRATIVE SYSTEM IN OPERATION

Agency Types

For purposes of analysis, the commissions may be divided into five large categories. The first is the custodial-institutional classification. In it are to be found those agencies having as their chief and often sole function the operation of an institution such as the state university, or agencies having as their primary concern the care of the buildings and grounds of public areas such as the State House in Dover. The second category consists of the advisory groups. Here are found the agencies that have as their main effort the gathering and giving of information upon request of other state officials. Third in line are the examining boards. These are the agencies that act in close support of the several trades and professions whose members must pass a qualifying examination before plying their trade or practicing their professions. The fourth group consists of the service agencies. Sharp issue may be taken with the assignment in this book of certain boards to this category, and with good reason. Many of these boards, in addition to their service functions, are regulatory in character. Police powers belong to the State Board of Agriculture and certainly to sub-divisions of the Highway Commission, but the reason for inclusion of these agencies in this class rather than in the "regulatory" class, is that *primarily* they are service organizations.* In the regulatory

* Many students of administration list examining boards as regulatory agencies. Distinction has been made here between examining boards and regulatory agencies because the former are limited by law to the giving of examinations and the granting and revoking of licenses in accordance with specific instructions from the legislature. Regulatory boards are those that have been given authority to make rules of a definite legislative nature upon the basis of broad grants of power from the General Assembly.

class are to be found the Public Service Commission, the State Tax Board, the Alcoholic Beverage Control Board, and the Industrial Accident Board together with some ten other agencies.

TABLE 8

ADMINISTRATIVE AGENCIES IN DELAWARE ARRANGED ACCORDING TO FUNCTION

<i>Custodial-Institutional</i>	<i>Advisory</i>	<i>Examining Boards</i>	<i>Service</i>	<i>Regulatory</i>
Archaeology	Bank Advisory	Accountancy	Agriculture	Aeronautics
Building and Grounds	Fire Prevention	Architects	Apple	Athletics
Corrections	Geological Survey	Bank Incorporation	Blind	Arbitration
Delaware Day	Housing	Barbers	Development	Banking
Detention Home	Permanent	Chiropody	Education	Boiler Rules
Ferris School	Budget	Chiropractic	Forestry	Disability
Kruse School	Permanent Code	Dental	Game & Fish	Harness Racing
Lewes Memorial	Post Mortem	Engineers and	Health	Industrial Accident
Library	Medical	Surveyors	Highway	Insurance
Portrait	Examiners	Graduate Nurses	Parks	Labor
Public Archives	Unemployment	Medical	Poultry	Alcoholic Beverage Control
State College	Council	Optometry	School Building	Pardons
State Hospital	Uniform State	Pharmacy	Shellfish	Parole
University of Delaware	Laws	Pharmacy	Soil Conservation	Police Pensions
Woods Haven School	Waterfront	Pilots	Unemployment	Public Service
	Youth	Physical Therapists	Compensation	Racing
	Military	Realtors	Welfare	Tax Board
		Undertakers	Welfare Home	Tax Commission
		Veterinary Medicine		Water Pollution

From an inspection of the requirements for membership on the boards and commissions, it will be seen that the demand for county residence and party representation is greatest in the service category. Some of the reasons for this are quite apparent. County membership on the agricultural and health boards is either directed by or inferred from the constitution.¹⁰ In the case of the Board of Education, close liaison with the local school districts makes it almost mandatory that the counties be represented directly in this agency. The county-state matching system, as employed in the operation of the Department of Public Welfare, is a further reason for close connection with the counties. The levy courts which supply part of these funds demand representation on the board that will dispense the money. If a board is charged with the spending of large sums of money, it is likely to have representatives from each county upon it.*

* The State Poultry Commission escaped the county residence requirement probably because the work of this agency is concentrated in one county, and no governor would be so impolitic as to fail to name persons from that area.

Appointments and Removals

Appointment to the several agencies is generally left to the governor.* However, in a few instances the power to appoint has been placed in the courts. The reason usually given for this deviation is that certain agencies should be exempted from "politics," and it is felt that judicial appointment would guarantee this exemption. Political leaders of both parties have constantly opposed judicial appointive power,¹¹ and the judges themselves are against it,¹² because the judges feel that it involves them in administrative operations for which they do not feel equipped.

We have seen that the governor has little power of removal. However, if it is so inclined, the legislature can give him this right. That it has not done so attests to the eternal jealousy of the General Assembly over the role of the governor in the administrative process. The legislature itself can remove members from an agency by merely ripping out the entire agency. The one very real limitation upon such action, however, is the political force of the pressure groups that may be interested in the work of the agency involved.

Although the legislature has not used its removal power to any inordinate extent, the fear that it might has tended to make the agencies look to the governor for protection against the legislative branch. If the governor is so inclined, he can impede legislation adverse to the agencies, by use of the veto.†

Patterns of Internal Organization

The legislature has been most active with respect to fashioning the internal organization of the commissions. In providing for the administrative machinery of the agencies, the legislature has created the office of executive director, also referred to as the executive secretary. Each state agency has an official of this kind. This official is appointed by the board and is responsible to it. In a few instances, the secretary is also a member of the board.

In addition to providing for a chief administrator, the legislature has determined the number of divisions comprising the internal organization of the agencies. The advisory and examining boards contain no sub-divisions. The custodial-institutional groups are not generally sub-divided, but in the case of the State Hospital several operational units have been created. The regulatory and service agencies are usually departmentalized. These agencies can be placed in two classes in terms of their internal organiza-

* Several of the agencies have an ex officio membership.

† In 1952 a bill was proposed that would have taken away certain powers of the Board of Health over care of tuberculosis patients, by creating a new board called the Tuberculosis Commission. After a concentrated attack upon the bill by the press and the medical profession, the governor vetoed it, after the legislature had adjourned. See *Wilmington News*, January 30, 1952.

tion. One class has a simple structure containing three or four bureaus; the other consists of those agencies having a fairly complex arrangement.

Often the administrative strait jacket in which the agencies have been placed by the legislature has made it extremely difficult for them to be administratively flexible. The inflexibility caused by the formal arrangements has often forced those charged with policy execution within the agencies to seek informal means for the accomplishment of their tasks.

Informal Arrangements

While it is undoubtedly true that in every administrative system, informal means for the effectuation of the administrative process obtain,¹³ the peculiar type of formal arrangement in Delaware practically necessitates the development of informal means of policy execution. The welter of agencies defy the most patient to effect any kind of coordination among them if the letter of the law governing their functions is followed. While there have been several attempts to overhaul the formal administrative pattern, these have failed because they have not been politically feasible. Accordingly, those engaged in administration, especially at agency level, have been forced to seek out ways and means by which they can bring some semblance of workable order into the "chaotic jumble of anachronisms and illogical relationships."¹⁴

By its very nature, informal organization is incapable of being neatly depicted. However, by a close observation of what has happened in the administrative process among the agencies, one can see certain patterns of cooperation and coordination that do not follow the formal lines of authority as these have been spelled out in the statutes.

For the sake of clarity of presentation, these informal arrangements can be discussed in two separate areas. It should be realized, however, that the whole informal organization is of a piece and that the separation is done merely for purposes of analysis. The first area to consider is that of the informal lines set up among the agencies themselves, particularly among the executive directors. The second area is that in which the governor plays a decided role in bringing the administrative process into some semblance of unity.

As pointed out earlier, state administration in Delaware rests largely with some eighty boards and a dozen or more elected or appointed executives. In order to appreciate fully the role of the state boards in the administrative operation, it is necessary to consider the fact that there has developed in Delaware a corps of commissioners bound together by a series of inter-personal relationships. Of some 300 board members in 1950 there were over thirty who held two or more commission memberships. The majority of these multiple memberships were in the custodial-institutional and advisory group classifications. In the regulatory and service fields, nearly 30 per cent of the agency members serving in 1950

had been in their jobs for over a decade. The bulk of the commissioners have come from the lower counties, and many of these persons are kinsmen or related through marriage.¹⁵ This intimacy has made it easy for board members to exchange information concerning the operation of their respective agencies and to conduct their activities on a highly informal basis. Delaware state administration is surrounded by a series of inter-personal arrangements probably to a greater extent than is the case in most of the other states.

Within recent years the tendency toward informality in administration has been abetted by the rise of a professional class of administrators—the agency directors. A sense of camaraderie exists among them that is probably caused by two factors: (1) the recognition of mutual administrative problems and (2) the fact that they as a class have been suspect, particularly by the lesser politicians who have held many of the minor jobs in the State agencies under the prevailing patronage system. Many of the professional administrators, schooled in the techniques of public management, are appalled at the intricacies of the political maze found in administrative organization. Yet they realize that any overt effort to abolish the system would result in a political impasse. Thus the executive directors, especially of the larger agencies such as the highway commission, the health and agricultural boards, and the welfare department, tend to cooperate one with the other on a basis of mutual recognition of the unworkability of the formal organizational arrangements. The lack of central auxiliary services has been one of the chief defects of the formal system. In the absence of such devices the directors of the more important agencies have informally exchanged information respecting the maintenance of records, purchasing, and personnel procedures. Exchange of information of a substantive nature has also been undertaken.¹⁶ In general, the directors have availed themselves of the benefits of each other's experiences.¹⁷

Coordination

Although great effort has been put forth by both commissioners and directors to achieve some semblance of cooperation among the administrative groups, there is still need for coordination of the entire administrative process under the supervision of a central authority. During the last ten or more years increased attention has been focused upon the gubernatorial office as the one most likely to provide that authority. Yet few controls rest with the governor.

We have already noted the location of fiscal power in his office. In addition, he has made use of the tendency toward informal cooperation on the part of the executive directors by creating a council of state executives. The aim of this council is to bring unity to the administrative operation. In 1941 Governor Walter W. Bacon called together, on an informal basis, the first Council of State Executives. Since then, succeeding governors

have availed themselves of this coordinating device. The council consists of the executive directors of the agencies rather than the members of the boards. The governors have felt justified in using the directors rather than the board members because it is the former group that is most involved with the routine problems of administration. Further, the directors have the more intimate knowledge of the administrative situation and can be the greater help to the chief executive in his effort to gain a full picture of the administrative process.

The development of a spirit of joint enterprise between governor and executive director is the keystone in the establishment of central direction in administration. This cooperation has been of importance in several areas of public management. The problem of purchasing has presented one of the chief obstacles in the path of efficient administration in Delaware. Pressure has been exerted constantly by politically powerful interests to compel the buying of materials that are often over-priced and often of inferior grade.* The institutional agencies have been hardest hit by such practice, and they have welcomed any possibility of getting out from under the thumb of demands for local purchasing.† In 1941 the Council of Executives introduced a system of cooperative purchasing of materials and supplies for several of the state-operated institutions. This was purely a voluntary arrangement among certain of the welfare agencies. Unfortunately, shortly after the inception of the program, shortages created by the war conditions arose, and each agency was left to its own devices to get what supplies it could from any source whatever. In 1947 the council again began work on a central purchasing scheme. As yet, however, it has made little headway except among a few of the welfare institutions.

Another area where coordination is badly needed is that of personnel management. In 1951 there were some 4,000 persons employed on a permanent basis in the state government exclusive of public school teachers. From time to time with seasonal demands necessitating increased employment in highway maintenance, the number becomes slightly larger. Although this number is not large either relatively or absolutely when compared with other states, serious problems have arisen within state personnel administration. One of the greatest concerns is the inequality in the apportionment of pay and work loads of the employees. This situation

* A bill was introduced in 1953 making it illegal for any official of the State to do business with a firm in which he had an interest. The measure was defeated in the Senate, but a storm of criticism arose from the press. See *Wilmington News*, March 2, 1953.

† Central purchasing had been adopted in Delaware in 1905 with the establishment of a Board of Supplies composed of the governor, secretary of state, and treasurer. The other duties of these officials permitted them little time to devote to the important problems of joint purchasing with the result that the whole program came into disrepute. The board was abolished in 1923.

his stimulated inter agency personnel raids and constant transfers; it has resulted in understaffing in many of the more important of the agencies.

Another serious defect in the personnel program is the lack of a merit system. Only four or five agencies handling Federal funds are required to appoint on the basis of merit. The others are subject to the spoils system, and the pressures of patronage are evident on all sides.* To combat the effects of the lack of design in the handling of personnel problems, the Council of Executives has sought, between 1943 and the present, to bring some semblance of orderly hiring and classification to state employment. Formulae have been devised by which equitable pay scales have been instituted among the larger agencies, and, where possible, other job conditions have been given a degree of conformity.¹⁸

The directors and the governor have made effective use of internal arrangements in arriving at cooperative action in the matter of planning for capital expenditures. When the Council of Executives had been first introduced by Governor Bacon in 1941, it concerned itself with the problem of capital fund allocation among the agencies. In fact, this was one of the areas of administration for which the council had been created. As an example of the cooperation afforded by the council, the capital improvements program of 1949, which dealt with the erection of new buildings and facilities, was drafted and administered largely by the governor and the council.¹⁹ In March of that year the governor asked the council to meet with him for the purpose of developing a coordinated plan for capital outlay among the commissions.²⁰ This arrangement has been continued and legislators serving on the Joint Finance Committee have been invited to sit with the council.

Fiscal planning in respect of deciding upon the scope and size of capital improvements is closely associated with the establishing of central controls over the financial affairs of the several agencies. Here again the role of finance as a means of bringing a degree of administrative integration to the myriad agencies can be seen. It is too early to state whether the efforts to coordinate the capital operations of the agencies will lead to over-all administrative planning. Program planning is basic to the proper effectuation of public policy, the responsibility for which is coming more and more to rest with the executive. Fiscal planning has every indication of moving in the direction of program planning in Delaware.

Several governors have tended to use the Council of Executives as a kind of general staff. It can be made to give the chief executive information and advice; it can be made a coordinating unit down through the line. It can, if used properly, acquaint him with the needs of administration

* A bill creating a state civil service system passed the legislature in 1949, but was vetoed by the governor. See *Wilmington News*, July 8, 1949. The present governor, Mr. J. Caleb Boggs, cited the need for a civil service merit system, but his proposal was not accepted by the legislature.

generally, and it should afford him ready access to the over-all administrative function. The use made of the council by the governor depends upon his determination to bring the agencies within his purview. If he does not bring them together in common council to thrash out their mutual problems, then he must try to cope with them individually. Usually the latter procedure will wear him down and let the stronger agencies ride herd. The governor has a weapon in the form of the council by which he can bring a strong measure of control over the administrative system. It is up to him whether he will use it.

ADMINISTRATIVE REORGANIZATION

The story of administrative reorganization in Delaware begins in 1918. In that year a serious effort was made under the auspices of several business and civic groups in the State to revamp the State's administrative organization. The New York Bureau of Municipal Research sent a staff of experts to survey the local situation, report findings, and make recommendations. This report, which called for elimination of the "hydra-headed administrative structure" and the introduction of nine large departments responsible to the governor, was cast aside completely by the legislature.

In 1920 a State Survey of Administration was made. This survey was conducted by a group of local persons, well-acquainted with the vagaries of politics in the State. Accordingly, its recommendations were more acceptable than were those of the New York group. This survey proposed certain changes in the financial operation at the state level, and it was instrumental in having the legislature make the first move in 1921 toward an executive budget. Between 1920 and 1950, little in the way of a general reorganization of the administrative establishment was attempted. However, the executive budget and the One Fund Law had both been passed by 1940.

Recent Efforts at Reorganization

By 1943 consolidation of agencies dealing with agriculture had been effected, but since then, three new farm agencies—Soil Conservation Commission, State Poultry Commission, and the State Apple Commission—have been created. Their independence stems from the fact the pressure groups behind them did not want them placed with the older State Board of Agriculture. Since 1931 there has been a definite movement to bring the several welfare agencies into a state department of public welfare. Slowly at first and then with a fair degree of rapidity the forces tending toward integration were felt. By 1951 the Department of Public Welfare, operating under a Board of Welfare consisting of twelve members, was created. This new organization now has general supervision of the welfare

program of the State, although several welfare groups such as the Delaware Commission for the Blind and the State Welfare Home Commission are still autonomous. Consolidation of the welfare agencies has met with opposition from several downstate legislators. They are wary of the formation of one large administrative commission which would tend to operate on a professional basis and deny the demands of local areas to have their say in welfare administration.²¹ In spite of this attitude, the movement toward consolidation in welfare is well underway.

The degree of agency consolidation that did take place in the 1940's was not sufficient to appease the demand for reduction in state expenses voiced by the business interests of the State. Accordingly, pressure was brought to bear upon the legislature, both by these interests and the governor, resulting in a concurrent resolution in 1949 that created a Commission on Reorganization of State Government as an *ad hoc* body charged with surveying the needs and existing practices of administration and reporting the findings with recommendations to the governor in 1950.

The commission was composed of thirty-five outstanding citizens of the State. They met for the first time to approve the decision of their executive committee (named by the governor) which had engaged the services of Griffenhagen Associates, experts in reorganizing state administrative systems. The next and final meeting of the Commission was convened to receive the findings of the executive committee and approve in principle the recommendations made by this committee. The full Commission did no work at all in the matter of reorganization. Although they had been formed to give a representative view on administrative reorganization to the Griffenhagen group. Griffenhagen Associates spent about five months making a general survey of the administrative situation in the State. They drew up charts showing the sprawling commission system, attempted to trace lines of responsibility, and then proposed several basic changes in the administrative arrangements. Chief among these was the creation of eleven large departments, each with a director in charge and directly responsible to the governor. The six elective officials of the executive branch were to remain without change. Health and welfare agencies were to be combined, a department of agriculture and conservation was to be set up, one large department of economic development was to be established and was to include some seventeen boards such as the Public Service Commission, the Board of Examiners of Barbers, and the State Racing Board. Separate departments of highways, labor, public safety, and education completed the list of important line divisions. One outstanding recommendation was that there should be a department of finance responsible to the secretary of state. Special departments of revenue and administrative services were also proposed.

The report was accepted in principle by the full commission, but with definite misgivings. Fear was expressed by several members of the com-

mission that by placing the large operational areas of administration directly under the governor, he would have the opportunity of building a political empire. Further, the representation of the counties in administration afforded by the commission system would disappear. The downstate legislators opposed this bitterly.²² When the reorganization proposals were introduced in the legislature, they were sent to committee, and after being forced to the floor, defeated. Some localism was present in the debate, but general opposition throughout the State was largely responsible for the ultimate rejection of formal reorganization proposed by experts.

Prospects for Further Improvement

There is an obvious need for administrative reorganization in Delaware. This need is felt most keenly in the area of financial operation. The demand for reduction in cost of government and for the introduction of centralized fiscal controls to achieve it should not, however, be confused with the demand to rationalize administrative activity in general. The rate of formal reorganization attests to the truth of this statement. Apparently the reform movement in 1918 confused these two demands. In 1950 the proposal for a reframing of the administrative establishment resulted from the need for coordination among the agencies. Instead of the proposed reorganization following the course that the informal arrangements had taken there was an attempt to launch a comprehensive revision of the entire administrative picture. By suggesting that the governor be clothed with formal control over the big agencies, the reorganizers ran smack into the fear on the part of the downstaters that such control meant the destruction of the political prerogatives of the rural sections.

Proper timing in the introduction of basic changes in administrative structure is most important in any realistic reorganization movement. Formal organization must fit as neatly as possible the political situation in which it functions. Usually the changes in the political situation occur over a long period of time and come slowly. Alterations in the formal lay-out of the administration must keep as closely as possible to the political modifications. Although informal administration cannot exceed the limits of legitimacy set by the formal organization, it can and does permit the administrative process to be kept within the limit of political realities. Formal reorganization must take place from time to time in order to permit the adjusting of administrative practices to the demands of society. Reorganization must take into account the prevailing political assumptions. Informal practices tend to indicate the direction in which the formal organization must be revamped. It would be well for those engaged in reorganization to apprise themselves of these informal arrangements and draft their charts accordingly. Failure to do this has resulted, in Delaware, in impracticable and infeasible schemes of reorganization totally unrelated

to the political and social assumptions underlying the process of government at state level.

The process of administration in Delaware is a reflection of countervailing tendencies. On the one hand there is the movement in the down-state areas toward particularism. On the other hand there is the desire of many of the more articulate elements in the industrial northern section of the State to concentrate control over the execution of public policy. This latter movement is in a way analogous to the movement toward the setting up of hierarchic controls in industry, and would be a natural assumption of the commercial and industrial leaders. It represents a so-called "business approach" to government. The constitution on the other hand is a reflection of the rural political mores of the State, or at least what they were when it was adopted. These still predominate. The constitution abets the tendency toward the splintering of administrative control and toward the deconcentration of political power by reposing the formal control over administration in the legislature. As examples of this splintering tendency, the constitution places the chief financial and law officers of the State not under the direction of the governor but makes them independent officials. In creating the state boards of agriculture and health, the constitution has set the pattern for the commission system, which scheme of organization has been followed by the General Assembly in its own development of administrative arrangements. With the possible exception of the item veto, the constitution has given the governor no weapon by which the agencies can be made to adhere to a unified program under his sponsorship. The courts have confirmed the intention of the constitutional convention that the legislature shall be the authority over the administrative process.

The legislature has, however, not been able to manage the execution of public policy. Slowly but surely the commissions have gravitated toward the control of the governor. He has abetted this tendency by subtle use of informal arrangements and by application of certain fiscal powers granted him by the legislature. This shift in control over the agencies has come about with the growth in the size and complexity of the population in the State. Today, the economy of Delaware is no longer a simple one. Controls that sufficed in a rural environment are no longer adequate. Growth in the economic sphere has meant growth in the political sphere, and with this growth has come the need for a more sophisticated approach to government, particularly in the area of administration. As Delaware has approached big government, the executive has grown in importance. Today, it is the governor who is looked to by more and more people for the proper execution of public policy. Accordingly, he has had to take steps to insure a degree of authority for the performance of this responsibility. Thus he has extended his power over the entire administrative

process. He has not achieved full control, but the trend is in this direction. The administrative process in Delaware is gradually being drawn into the purview of the executive.

NOTES

¹ V. O. Key, Jr., "Politics and Administration," *The Future of Government in the United States*, ed. by Leonard D. White (Chicago: The University of Chicago Press, 1942).

² Art. III, sec. 13.

³ *State v Burris*, 4 Del. 3 (1901); *State v Isaacs*, 36 Del. 110 (1934).

⁴ *Collison v State*, 39 Del. 469 (1938).

⁵ New York Bureau of Municipal Research, *Survey of State Government in Delaware*, 1918 (New York, 1919), pp. 1-15. To the author's knowledge, no copies of this report can be found in Delaware. There is a copy in the Institute of Public Administration, 676 Park Avenue, New York, N. Y.

⁶ See *Sussex Countian*, February 20, 1941, for an excellent resume of the factors conditioning administrative form in Delaware.

⁷ See F. W. Coker, "Dogmas of Administrative Reform," *American Political Science Review*, August 1922, 399-411.

⁸ See *Reorganization of the Executive Branch of the State Government of Delaware*, by Griffenhagen Associates, December, 1950.

⁹ See *Wilmington News*, August 25, 1948, *Journal-Every-Evening*, September 1, 1942, and *Journal-Every-Evening*, January 1, 1949.

¹⁰ See art. XI, sec. 2, and Art. XII.

¹¹ See *Wilmington Journal-Every-Evening*, August 28, 1948.

¹² See Message of Governor Charles R. Miller, January, 1915.

¹³ E. Pendleton Herring, *Politics in a Democracy* (Rinehart, 1940), p. 376.

¹⁴ New York Bureau of Municipal Research, *Survey of Wilmington* (New York, 1918), p. 11.

¹⁵ For details concerning these relationships, see Dolan, *Organization of State Administration in Delaware* (Baltimore: The Johns Hopkins Press, 1950), pp. 95-96.

¹⁶ See *Preliminary Report of the State Board of Health* for 1946, for example of the cooperation between that agency and the Old Age Welfare Commission (now abolished) with respect to the treatment of syphilis.

¹⁷ For evidence of the close cooperation obtaining between the State Board of Agriculture and Soil Conservation Commission, see *Report of the State Soil Conservation Commission* for 1947 (Dover, Delaware), p. 4.

¹⁸ See conclusions of a study made by the Personnel Classification Commission, an *ad hoc* body appointed by the governor in 1947. See *Wilmington News*, February 2, 1949.

¹⁹ See *Wilmington News*, March 22, 1949.

²⁰ See *Wilmington News*, March 14, 1949.

²¹ See *Sussex Countian*, March 25, 1943.

²² See *Wilmington News*, April 27, 1951.



CHAPTER 8

The Revenue System

THE EXAMINATION of financial operations in Delaware reveals the growth of the State more accurately than does the analysis of any other type of governmental activity. Public finance in Delaware is acquiring the characteristics of finance that are associated with large scale enterprise. Today the First State is spending increasing amounts in order to meet the incessant demands of its citizens. This situation is a decided reversal from the one that existed in 1940.

The conservative overtones of life in Delaware have been most evident in the approach to public spending. Extreme caution has been exercised in the area of public expenditure. Improper timing by the executive and the legislature with respect to making expenditures has resulted again and again in a false economy, causing the State to pay two and three times what it would have had to if appropriations had been authorized when the need for them had become obvious. Within recent years, the legislature, caught in a swirl of inflation, has failed to make available, at the propitious moment, the money for educational facilities. The result has been that the public costs for capital improvements in this field have been enormous.* One of the reasons for parsimony and the resultant false economy has been the presence of extremely wealthy individuals who have on occasion contributed handsomely to the establishment of highways, schools, and other public works. As a result, there has developed in the minds of some of the tax conscious elements of the society a feeling that no public support was necessary. Obviously, the needs of modern society cannot be met by private philanthropy. Yet, the Delaware public is not accus-

* Delaware apparently is not alone in this respect. See comment in *The New York Times*, February 8, 1953, in regard to state expenditures for public education.

tomed to being sufficiently taxed at the state level to supply adequate services.

Although numbering forty-sixth among the states in the amount of revenue received in 1953, Delaware ranked in the upper quartile in respect of per capita revenue. Curiously enough the high per capita income gives rise to a serious problem in the realm of public finance.* This high income is owing to the fact that the number of extremely wealthy people living in the State is proportionately high. The General Assembly has tended to avoid any forthright progressive tax program for fear of being accused of perpetrating inequities. Recently, there has been an attempt to obtain revenue through borrowing, but this tendency has been in turn challenged by those who realize that a mounting debt lowers the credit of the State and makes increased taxation inevitable. Hence, there is a sense of extreme confusion in the realm of public finance.

Another reason for the lack of a clear financial program capable of meeting the current requirements of the populace is the opposition of downstaters to spending for services from which, they feel, the citizens of the metropolitan area will receive the proportionately greater benefit. This rural antipathy to public spending is perhaps the greatest deterrent to a full acceptance by the State of the responsibility for an adequate treatment of social needs. As ruralism, however, is superseded by an increasing industrialism, pressure undoubtedly will be brought to bear upon the government to make greater use of the taxing and spending powers. This pressure is already being exerted through several of the State's administrative agencies responsible for the health, welfare, and education of the citizenry. As these efforts are backed by rising numbers of voters, the governor and other officials elected on a state-wide basis are beginning to see the political implications of such movement.

There is evidence that politicians of both parties in New Castle County are becoming extremely conscious of the need for a more liberal spending policy. The Democrats, because of the less conservative approach adopted by the party at the national level, will probably be quicker to respond to these demands than will the Republicans, who find much of their financial backing among the business interests. As shown in the chapter on popular controls, the force of the demands emanating from the northern section of the State will be the commanding element in the course of fiscal policy in the immediate future. The big question is how will the revenue required to meet an increased expenditure be gained. Both parties dislike to increase taxes.

* In 1953 it was \$2,304. Delaware, since 1940, has been consistently among the first five states in per capita income.

CONSTITUTIONAL PROVISIONS RESPECTING FINANCE

The State constitution devotes one full article and several other passages to the matter of public finance. Article VIII states that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and that all levies must be made under general law. All bills for the raising of revenue originate in the House of Representatives. No riders to revenue bills are permitted.¹

No money may be borrowed or a debt created by the State except pursuant to an act of the General Assembly that has had the concurrence of three fourths of all the members elected to each house. Likewise, the credit of the State and the credit of a county or municipality may not be pledged other than by an act passed by three fourths of the members of the legislature. In spite of the strictures against borrowing, it should be noted that the legislature has permitted a rapid increase in the public debt whereas they have met proposed increases in taxes with stubborn resistance.

To guard against any rash action by the General Assembly in the appropriation of public moneys, the constitution authorizes the governor to veto separate items in appropriation bills.² The only other executive controls over fiscal operations provided by the constitution are found in the offices of the state treasurer and state auditor of accounts. Both positions are elective and thus are independent of the governor and the legislature. The state treasurer, however, is required to settle his accounts annually with the General Assembly. No specific duties are assigned the auditor by the constitution.

THE STATE REVENUE SYSTEM

Although budgetary power now rests with the governor if he has the wit and the courage to use it, the raising of revenue resides almost exclusively with the General Assembly. The recommendations of the chief executive concerning the amount of money to be raised and the sources to be tapped by taxation are taken into consideration by the lawmakers, but the legislature has the prerogative in the raising of revenue.

In addition to income derived from taxation income is obtained through tolls on the Delaware River Bridge, insurance accounts connected with unemployment compensation, Federal grants-in-aid, fines, fees assessed in connection with corporation charter revisions, rents from oyster beds, and sale of timber from state lands.

Taxation, as intimated above, has always been a touchy point in Delaware, as it is in most jurisdictions. The general property tax was first used as the means of raising revenue, but owing to the very limited land area

of the State and the refusal of the rural elements to accept a rate of tax commensurate with the rising need for income, the general property tax has been abandoned at the state level, except that it is still used in state school districts.

Excises, of course, have been used since time immemorial, but until quite recently, when heavy liquor and tobacco taxes were invoked, the yield was not great. With the advent of the automobile, the legislature found a source of income in the form of motor-fuel taxes, which today rank high among the State revenues. Another form of excise, but one that is treated separately in most of the tax breakdowns, is the corporation franchise tax, which is assessed against all corporations chartered by the State.

One of the more important sources of revenue at present is the individual income tax. There has been an over-all increase in the size of income tax collections since 1945, although the rates are still fairly liberal. Delaware does not impose a tax on corporate incomes, and considering the fact that liberal incorporation laws have prevailed in the First State there is little likelihood that such a tax will be enacted.

The State levies a tax on inheritances and on estates of decedents. Gifts made in contemplation of death are treated the same as inheritances. Another important source of revenue is the tax on *pari-mutuels*, a form of betting at race tracks.

Major Tax Sources

Excises. Excises account for the largest block of tax revenue; in this classification of taxes are included the taxes on liquors, admissions, gasoline, and tobacco. Gasoline levies are responsible for the largest amount of revenue in this category. Until recently both liquor and tobacco taxes were not heavy, but within the past few years the rates on these commodities have increased appreciably. The rate per gallon of gasoline is five cents. The rate on cigarettes is two cents the pack. The rates on alcoholic beverages vary considerably depending upon the type and quantity.

Sales taxes have not been favorably received by the majority of the citizens in Delaware. Merchants have been definitely opposed although business organizations such as the Delaware Chamber of Commerce have at times advocated the employment of this tax. Some of the financial interests have suggested that this form of taxation be tried as a substitute for increases in the other forms of levy.

Licenses. There are many different types of license—some in the form of tax—issued by the State. The corporation franchise tax is covered under this classification as is the tax on *pari-mutuel* racing.

The corporation franchise tax is a form of excise that is a charge on the right of a business to incorporate in the State. The tax is based on the number of shares of its stock that a company has issued, and an upper limit is placed on the total amount that may be exacted from any one

corporation. This revenue has pushed close to the \$5 million mark, and presently is a big factor in retaining the liberal incorporation laws of the State. It was originally levied in order to help establish the school fund, but its present returns go into the general fund.

The income from the race tracks has loomed large in Delaware in recent years. At first there were only the steeplechase and flat races at Delaware Park. Now, in addition, there are several harness racing tracks. All of these yield a good income. In 1953 and 1954 over \$1 million came into the state treasury annually from these sources. Strong pressure is placed against this type of revenue by some of the church groups who are opposed to gambling in any form. So far their counsel has gone unheeded, and there is little doubt that horse racing has come to stay in Delaware.

Another form of license tax is that imposed upon businesses and trades in Delaware. Licenses are required of nearly sixty professions and trades. In addition, fees are exacted for fishing and hunting permits. The total amount received from this type of taxation in 1952 was slightly over \$1.5 million, and it is steadily increasing. Mercantile licenses alone brought in \$750,000 in 1952. The imposition of such a multiplicity of fees and licenses at state level has tended to make this form of taxation a decided nuisance, although some form of license with respect to the professions is needed.

Also included in the license tax category is the automobile registration and operation fees. These fees have likewise climbed steadily in Delaware. In 1952 they brought in approximately \$1.5 million.

TABLE 9

DELAWARE STATE TAX RECEIPTS, BY CATEGORIES, 1940-1954

<i>Year</i>	<i>Total (000)</i>	<i>Excises (000)</i>	<i>Licenses (000)</i>	<i>Individual Income (000)</i>	<i>Gift and Inheritance (000)</i>	<i>Misc. (000)</i>
1954	\$41,985	\$11,548	\$10,908	\$10,945	\$7,265	\$1,325
1953	25,573	9,972	9,891	3,077	1,482	1,151
1952	24,071	9,150	8,231	4,607	1,098	985
1951	28,485	8,574	7,579	9,087	2,474	771
1950	27,166	7,974	7,342	7,379	2,879	1,592
1949	17,019	5,707	6,871	2,353	716	1,372
1948	15,965	5,379	6,573	1,886	936	1,191
1947	15,270	5,680	6,051	1,755	549	1,235
1946	16,019	4,860	5,657	1,464	3,066	972
1945	14,142	6,003	5,249	1,271	502	1,117
1944	13,819	5,952	5,183	1,108	253	1,323
1943	12,923	4,514	4,938	1,206	834	1,431
1942	13,376	4,069	5,080	1,515	161	2,551
1941	13,079	3,794	5,022	1,553	268	2,442
1940	12,669	2,863	5,528	1,654	472	86

Income Tax. Delaware has had an income tax law since 1917. The chief impetus behind its enactment was the need for adequate school revenues. Led by public-spirited citizens like Pierre S. du Pont the articulate elements in the State forced the passage of a series of income tax laws between 1917 and 1925. Serious opposition was encountered throughout this period, but by the latter date it was generally recognized that this form of tax was equitable and provided a good revenue.

From a perusal of Table 9 it will be seen that the individual income tax is an important source of income to the State. In 1951 this item soared to over \$9 million. This was the year of the gross income levy.* It was a temporary measure, however, and in 1953 a new law was enacted based on net income figures with rates ranging from one to six per cent. In comparison with other states Delaware does not exact a high tax, but the over-all increase in taxation in the State has brought the fact of taxes home to more and more people, and there is grumbling, which can have political manifestations.

RATE OF STATE TAX ON INDIVIDUAL INCOMES IN DELAWARE

First	\$3,000	of income	1%
Next	\$1,000	" "	2%
Next	\$2,000	" "	3%
Next	\$2,000	" "	4%
Next	\$92,000	" "	5%
On all in excess of	\$100,000		6%

In 1921 a strong plea was made for the enactment of a corporate income levy, but unabated opposition defeated the move. Delaware has enjoyed a steady income from the corporate franchise tax, and it is feared that an income levy would drive the corporations from the State. Yet movements persist to exact some form of tax on corporations whether of an income or excise nature, and as the need for revenue increases these suggestions assume prominence. For a corporate levy to be really effective it would have to be placed upon total business done by all corporations domiciled within the State. It is highly questionable whether such a plan would be feasible from a political or economic point of view. Whatever the course of taxation involving business it will necessitate close scrutiny of over-all effects, and if changes are made in present policy, consultation between business and political leaders will be in order.

Inheritance and Estate Taxes. Delaware employs both inheritance and estate taxes. The rate on inheritance tax runs from 1 to 8 per cent depending upon the category of the estate transferred. Exemption of \$20,000 is allowed if the husband or wife is the decedent. Certain other exemptions

* Gross income levy is a tax imposed on the total income without any form of deduction whatsoever.

are permitted so that the incidence of this tax is primarily upon quite wealthy individuals. Estate taxes in Delaware follow the usual form of excise upon bequests. These taxes apply only to estates subject to the Federal estate tax law, and the credits allowed under Federal law are applicable. In a state with such a high percentage of fairly wealthy individuals it might seem that the amounts received through death taxes would be relatively great. However, the average annual return from this source of revenue in the last five years is about \$1.5 million. Now and then a windfall appears, but there is no evidence that tax officials base their estimates on high returns from this source.

Nontax Sources

In addition to the receipts from taxes Delaware enjoys considerable income from nontax sources. Chief among these are the tolls from the Delaware River Bridge, which in 1953 amounted to close to \$6 million.

Tolls. Under the existing statutes the tolls from the Delaware River Bridge must be applied to maintenance of the structure and to the payment of interest on and to the retirement of the bonds issued to meet the costs of erection. It will be interesting to see whether the State will relinquish this source of income once the bridge bonds are retired.

Federal Grants-in-Aid. In Delaware Federal grants-in-aid amount to nearly \$6 million annually and represent a sizable portion of the moneys that the State spends for the normal functions of government concerned with health, welfare, and education. They will be discussed at length in the chapter on intergovernmental relations.

Fees from Businesses. Delaware has become increasingly engaged in matters such as charter revisions and corporation listings. The fact that the State is the home of thousands of corporations * permits it to exact fees for corporation rearrangements; these fees, although not large in the aggregate, do bring in some revenue.

Fines and Forfeits. Fines and other forfeits levied upon persons and corporations for failure to meet the requirements of the statutes do not account for much return. Less than \$200,000 annually has come in from this source. Most of the fines result from violations of the motor vehicle code.

Earnings on Property and Investments. Delaware's earnings from the rental of state-owned property and from investments amounts to nearly \$1 million annually. Rentals from oyster beds, returns from the sale of timber from state-owned lands, and interests from investments are the primary sources of this type of revenue.

Miscellaneous. There are a number of miscellaneous revenue sources, which do not fit into any of the classifications above. Close to \$1 million

* See Chapter 20.

has come in annually from state-owned hospitals and other welfare institutions. Private donations, although diminishing in importance of late, still account for over \$1,600,000 annually in non-tax revenue.

Approximately \$16 million, which is exclusive of the returns from insurance trusts, came into the state treasury in 1953 from non-tax sources. This sum represents a sizable amount in the total revenue picture and is welcomed by sorely pressed budget officers and legislators who feel the effects of the shrinking and elusive tax dollar. It is perhaps safe to say that these means of gaining revenue will continue to be employed as the demand for public services continues to rise.

Nearly \$2,225,000 is received from employers under the unemployment compensation laws. This money is not available to the State for general purposes, however, and really is not an item in state revenue inasmuch as it must be paid out only for the purpose of meeting the requirements of the statutes.

STATE TAX ADMINISTRATION

The present administrative machinery for the handling of state taxes reflects the slow recognition of the need to increase taxes in order to provide adequate social services in Delaware. Prior to the passing of the state-wide school code in 1921 tax collection was largely on a local basis, and the amounts collected were insufficient to provide adequate educational facilities. With the enactment of the school code the need for effective collection of revenue became manifest. In 1921 the office of state school tax commissioner was created, and in 1925 this office was superseded by that of state tax commissioner. The latter was made the head of a central tax office.

Even with the setting up of a central tax office the statutes continued to provide for a collector of state revenue who is independent of the State Tax Department. In addition to this failure to centralize all machinery for collection of state revenue the law permits such agencies as the Game and Fish Commission to collect fees for licenses which they issue. At present some half dozen state agencies are involved in the collection of state revenue.

Organization

The State Tax Department consists of the state tax commissioner, the State Tax Board, the deputy and assistant tax commissioners. The chief administrative officer of the department is the state tax commissioner. He is appointed by the governor for a term of four years. He must be a person knowledgeable of tax collection with wide experience in tax administration. State citizenship is required. Reappointment to the office is permitted. The commissioner may be removed by the governor for inefficiency, neglect

of duty, or misconduct in office, and a commissioner may also be removed for these or other causes by the Senate.

The commissioner is the executive head of the tax department, and he has sole charge of its administration. He may make rules and regulations and decisions so long as they are consistent with the statutes governing tax collection and its enforcement. He must keep and make available to the public the decisions made by the State Tax Board. The appointment of an assistant commissioner rests with him. The tax commissioner may appoint an advisory board of not more than ten lawyers and tax experts to make recommendations concerning the rules and regulations of the tax department and concerning changes in the State tax laws.

The State Tax Board, which serves as an appellate body to rulings from the commissioner, consists of three men—one of whom must be an attorney—appointed by the governor for terms of four years. They receive nominal salaries. The board decides all questions of policy submitted to it by the tax commissioner. The board hears complaints and appeals from the decisions or rulings of the tax commissioner. The board has the power to issue subpoenas compelling attendance of parties before it.

The General Assembly has retained the office of collector of state revenue as an agency distinct from the State Tax Department. This office is appointed to by the governor for a term of four years, and he acts as enforcement officer for the state tax commission, the secretary of state in the matter of charter levies, the insurance commissioner, and the state banking commissioner. He is also charged with the inspection of statements concerning amounts of tax due from citizens and corporations. Although he is enjoined to work in conjunction with the state tax department, he also has the authority to investigate tax claims on his own initiative. There is serious question as to the need for continuing this office. It is a vestigial remain from by-gone days. The collector's duties should be placed with the State Tax Department and the office should be eliminated. It has served mostly as a political plum.

Responsibility for tax enforcement also rests with the attorney general, who appoints a special deputy attorney general to assist the tax department in this respect.

Other difficulties still remain in the collection of taxes in Delaware. Tax evasion has at times been wide-spread. Enforcement has always been difficult because of the inadequate staff in the tax office and because of the failure to place responsibility in the hands of one official. With the closer cooperation between state and Federal tax offices and the greater staffing of the state tax department, tax evasion now appears to be on the decline.

Administrative Procedures

Procedures for the collection of taxes in Delaware are varied. The income tax is now paid through a withholding scheme as far as wage

earners are concerned. Professional and other privately employed persons and those deriving moneys from securities file intentions to pay or declarations. The employer is thus placed in the position of tax collector. Blanks for the purpose of making returns are sent to alleged taxables by the tax commissioner, the return must be in by April 30th. The corporation franchise tax collection is made by the state tax commissioner through the secretary of state's office, which office furnishes the blanks for returns. Excises such as gasoline, tobacco, and liquor taxes are paid by the manufacturer or the seller. In the case of motor fuel taxes the State Highway Department acts as the collector, having a special Motor Fuel Tax Division within it for this purpose. Taxes levied upon banks and insurance companies for doing business within the State are collected by the state bank commissioner and insurance commissioner respectively. Most of the other license taxes are collected directly by the State Tax Department. All returns must be made to the state treasurer either directly or through the State Tax Department.*

Appeals

Although the statutes place the authority for decisions respecting tax assessment with the state tax commissioner, they also provide for an equitable system of appeals from these rulings. Taxables, that is, persons against whom taxes have been assessed, may lodge an appeal with the State Tax Board. At the complainant's request the board will sit formally or informally. After an informal hearing it may be reconvened to hear the same plea formally. After determination by the board upon complaint or appeal of a taxable at a formal hearing, appeal may be made, within thirty days, from notification of the board's decision, to the superior court. This court is vested with jurisdiction to hear and determine all appeals from the Tax Board and it has prescribed the procedure to be followed in such appeals. All appeals are heard without a jury. Only under procedural questions alleging violation of the Federal or State constitutions may appeal from the superior court be taken to the State supreme court.

Generally the superior court has tended to uphold the decisions of the State Tax Board or commissioner. For example the findings of the tax commissioner as to fair market price or value of property assessed is presumed to be correct.³ In another case it was held by the supreme court that the assessment of income taxes by tax commissioner is *prima facie* correct, and the burden is upon the taxable to establish error by reasonable and competent evidence.⁴

* In 1933 there was serious controversy between the governor and the General Assembly over who should collect the inheritance tax. Some of the legislators wanted this kept within the counties, but with the support of the Wilmington press, the governor was able to have the collection of this tax placed in the state tax commissioner's office. See *Wilmington Journal-Every-Evening*, March 19, 1935.

The incidence of appeals from the Tax Board's decisions is not great. One reason for this is that the board has been very careful not to act arbitrarily or high-handedly but rather to resolve many questions in favor of the complainant. The costs of litigation must be borne by the complainant if he loses his appeal, and this factor probably precludes extended use of the right.

Delaware has had the unique advantage of having had some very able men serve in the tax commissioner's office. These men have not only had a technical knowledge of tax administration but they have generally exercised a keen appreciation of the problems surrounding taxation and tax collection in a state whose citizens only recently have come to realize the need for adequate taxation if the requirements of a modern state are to be satisfied.

NOTES

¹ Art. III, sec. 2.

² Art. III, sec. 18.

³ *Vale v DuPont*, 37 Del. 254 (1936).

⁴ *Vale v State School Tax Department*, 36 Del. 252 (1934).



CHAPTER 9

Financial Administration

HAVING EXPLORED that portion of finance that treats of the means employed for gaining revenue, we now turn to the methods and policy concerned with the expenditure of public moneys.

Growth in public spending in Delaware has brought the attention of the citizens of the First State to the problems of budget, procurement, treasury management, accounting, and debt. Prior to the 1940's few people were concerned with such prosaic matters, but today more and more people are conscious of the terrific impact these processes have upon the pocketbook as well as upon the personal welfare of the average citizen. Accordingly, fiscal policy looms as one of the most important aspects of government, and there are not many politicians who are not aware of the role that fiscal operations play in the political process.

GROWTH IN STATE EXPENDITURES

Analysis of expenditures within recent years reveals that public spending in Delaware is showing an extremely rapid increase, and that over the years there have been significant changes in the major purposes of expenditure. Table 10 indicates the items for which appropriations were made in 1941 and in 1954. Education and highways consumed the greater shares in both years. Health and public welfare are beginning to make demands for a larger portion of the public dollar. The problem of debt maintenance is beginning to loom as a major item, and there is little question that the costs of public safety and general government will continue to increase absolutely if not proportionately.

One reason for such a high percentage of the public dollar being spent for education and highways by the State is that, in Delaware, expenditures

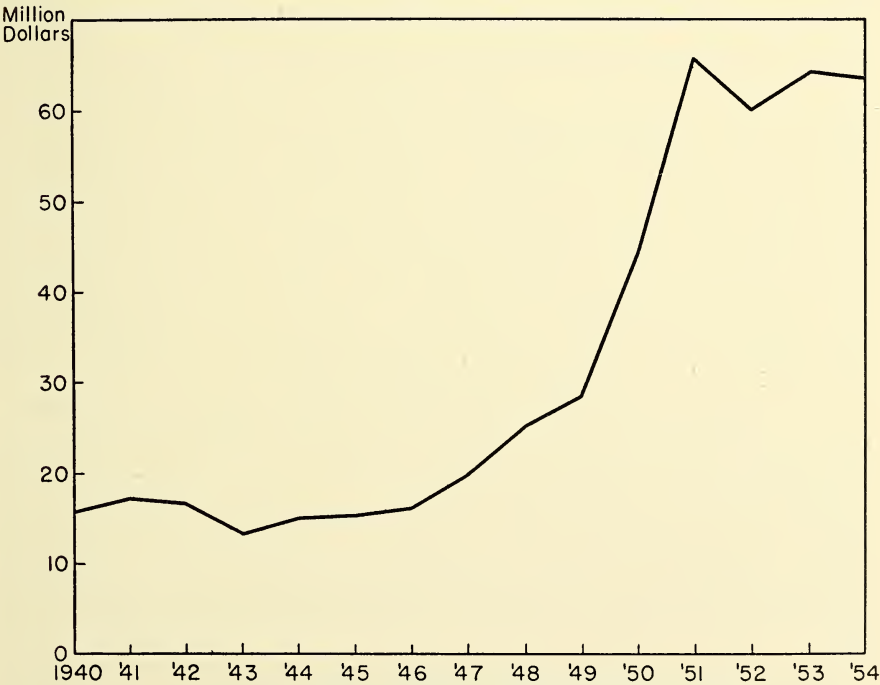
TABLE 10

DELAWARE STATE EXPENDITURES BY MAJOR FUNCTION, 1941 AND 1954

Function	1941		1954	
	Amount (000)	Per Cent	Amount (000)	Per Cent
Agriculture and natural resources	\$ 427	3.2	\$ 1,414	2.2
Debt service	367	2.7	2,956	4.7
Education	5,006	37.1	29,186	46.0
General government	829	6.1	1,889	3.0
Health	1,287	9.5	5,611	8.8
Highways	1,551	11.5	12,658	20.0
Public safety	739	5.5	1,438	2.3
Public welfare	915	6.8	3,616	5.7
Miscellaneous	2,379	17.6	4,628	7.3
TOTAL	\$13,500	100.0	\$63,396	100.0

on the local level for these items are at a minimum. The school system has been operated on a local-state basis since 1921, with the State supplying the major share of the funds. Highways became state-operated in 1935.

Delaware spends a greater percentage of its public revenue on education and highways than does any other state. It is the absorption by the State



TOTAL STATE EXPENDITURES, DELAWARE, 1940-1954

of the costs of schools and roads that makes Delaware's state-local ratio of taxation so high. This fact has far-reaching political significance. Many persons are constantly pointing out the high state tax level and demanding that reduction be made. Little effort is made, however, to relate the total tax take, that is, both state and local, in Delaware to that collected in other commonwealths. To consider only the state tax in Delaware is to obtain a misleading picture of the total fiscal operation.

BUDGETARY PROCEDURES

In providing for the spending of public funds the legislature has given the executive branch of the government the right to initiate the budget. In 1939 the General Assembly passed the present budget law.¹ By this statute, the biennial budget is prepared by the Permanent Budget Commission, consisting of the governor, the secretary of state, the tax commissioner, the treasurer, and the auditor. The governor acts as chairman. He has control of the commission inasmuch as the secretary of state and the tax commissioner are his appointees. Although the commission oversees the execution of the budget as well as its formulation it does not act as an administrative board.

Formulation of the Budget

The commission requires all state agencies and some agencies of a quasi-public character using state funds such as the Woods Haven School to submit statements of anticipated expenditures for the ensuing biennium. The commission investigates the proposed estimates of the agencies, holds hearings concerning them, and modifies the requests if it desires; it then makes recommendations to the governor. The governor usually accepts these recommendations inasmuch as he is a member of the commission and has probably had a hand in the commission's decisions. It is this relationship of the governor to the budgetary process that enhances his power vis-a-vis the administrative agencies. Provision is made for the governor-elect in gubernatorial years to sit in on the budget hearings with the right to ask questions of the agency heads respecting estimates.²

The governor upon receipt of the report of the budget commission may make such further changes as he deems necessary. He then submits his budget message to the legislature within five days after that body has been organized. This procedure usually takes place during the second week of the first January in the biennium. At the same time he submits his budget message, copies of proposed appropriation measures are also submitted. These bills are lumped into what is known as the Budget Appropriation Bill.

Inasmuch as no moneys may be spent by the State without the authority of the General Assembly, all measures calling for appropriations must be

approved by the assembly. The main cog in the legislative action concerned with appropriations is the Joint Legislative Finance Committee. This group consists of the five members of the House Appropriation Committee and the five senators serving on the Senate Finance Committee. The chief task of the Joint Finance Committee is to handle the budget in its legislative phase.

The budget report is contained in an 8" x 12" pamphlet about one-half inch in thickness. It covers the proposed expenditures for a two-year period, and includes a record of the past year's actual expenses compared with what had been estimated by and appropriated to each agency for that time. Estimated income according to specific categories of revenue is also listed. Appropriation items are listed under some fifteen categories such as "legislative and elections," "debt service," and "education." Each of these is broken down into subdivisions with detailed expenditures listed under each. The Delaware budget is not, however, of the performance type with the result that the mere inspection of the figures does not reveal the operations of the government.

Consideration by the Legislature

By having a close acquaintance with the workings of the state agencies the members of the Joint Finance Committee, if they are conscientious about their duties, can get a fairly good idea concerning the use to be made of public money. The intimate contact that members of the legislature have with the various state facilities enables them to have more than a statistical picture of public spending.

While the Joint Finance Committee is holding hearings on the budget, the General Assembly usually recesses. Ordinarily, little publicity attends these hearings, but at times the press gives rather full accounts. After the committee has completed its work, its report is submitted to the legislature and the appropriation bills are called for passage. Few if any amendments are proposed from the floor. The Joint Finance Committee usually has full responsibility for legislative action upon the governor's budget. At times, rather drastic changes are made by it in the executive proposals, but if the governor stands firm, he will generally prevail.

The power of the governor arises, in part, from his item veto. If the legislature has added to the budget, he may cut out certain of the items in the appropriation. On the other hand, if his estimates have been drastically reduced by the lawmakers, he may effect retaliation by use of the regular veto on some measure that they want enacted. Inasmuch as most of the appropriation bills reach his desk toward the end of the legislative session, he has great opportunity to bring much of the spending into line with his own desires.

Because of the difficulty in anticipating accurately the many demands for public moneys arising in the various agencies, there is always need for

additional appropriations. This need arises most frequently in areas in which emergency demands occur. Highway breakdowns, bridge wash-outs, capital replacements in schools, increased load placed upon health services resulting from public disaster, all these have to be met without delay. One way of meeting some of these needs is by the enactment of special appropriation bills. The State Code demands that every special or supplementary appropriation must be embodied in a separate bill limited to some single work, object, or purpose stated in the bill. Each bill must designate the source from which the money is to be derived. No supplementary appropriation shall be passed, if, when the amount is added to that already appropriated by the regular budget, the aggregate will exceed the state revenues set forth in the budget.³

The passage of supplementary appropriation bills has been one of the most disturbing elements in financial practice in Delaware. Such action destroys the comprehensiveness of the budget, and it often promotes maneuvering within the administrative agencies for a larger share of the public money. Further, the bills usually get into the legislature without the acquiescence of the governor. This action tends to remove the control over the budget from the executive. Governors have accordingly frowned upon such practices. To help offset this, the governors have resorted to the device of the contingency fund. The fund consists of 15 per cent of the total appropriation made to a given agency. This amount is withheld from the agency and may be spent only with the approval of the governor acting through the permanent budget commission.⁴ The contingency fund has met with serious opposition from many legislators because it removes from their hands a measure of control over total expenditures of an agency. Furthermore, it places a weapon in the hands of the governor for dealing with the administrative groups.

The conflict arising from whether to use supplementaries or contingency funds goes to the root of the problem of who should control the budget. The legislature has been loath to accept the theory of a tightly controlled executive budget with the result that both branches of the government are constantly trying to outguess the other in the manipulation of fiscal power.

PROCUREMENT

With the decided increases in state spending the need for economical approach to the purchasing of supplies for public use has become obvious. Delaware is just beginning to consider seriously the intallation of a system of central procurement to cover the purchase of materials by the several branches of the government. The printing needs of the legislature are also part of the picture of state purchasing, but the handling of this item seems to be a traditional legislative prerogative.

Purchasing

According to the state constitution all stationery, printing, paper and fuel used by the legislature and other departments of government shall be furnished under contract to be given to the lowest responsible bidder at or below such maximum prices as are established by law. No member of the legislature or officer of any department can be personally interested in any contract that is let by the State.⁵

A form of central purchasing had been adopted in Delaware in 1905 with the establishment of a Board of State Supplies composed of the governor, the secretary of state, and the treasurer. However, the other duties of these officials were so great, that little time could be devoted to effecting a scheme of coordinated procurement. The duties connected with central purchasing finally devolved upon a subordinate in the office of secretary of state, and little chance for the success of the plan remained. The statute was finally repealed in 1923, and each agency took up the task of supplying its own needs.

The Council of State Executives in 1941 made strong recommendations for the setting up of an informal arrangement whereby certain institutional agencies would pool their needs and buy collectively through an agent designated by the council.

Under existing statutes all supplies required by agencies to whom the legislature has appropriated moneys from the state treasury must be obtained under bid. In cases where the cost does not exceed \$500 the head of the agency may, with the consent of the treasurer and auditor, enter into contracts without receiving bids. For agencies not given specific appropriations an item is set up in the Budget Appropriation Bill for state departmental supplies. Warrants for such supplies are drawn by the secretary of state with the consent of the treasurer and auditor. Purchases made from the Federal government are handled through the secretary of state's office.

Recently, some standard requirements such as fuel oil have been bought centrally through the budget commission, the agencies giving their consent to this practice. By law, however, each agency is responsible for spending its own appropriations, and in order to effect a full-scale system of central purchasing the existing statutes would have to be revised.

In 1954 an informal group of legislators and the secretary of state ordered a report on purchasing in the State of Delaware to be prepared by the Public Administration Service. This was done, and the general recommendations were to establish a central purchasing agency headed by a single officer responsible to and appointed by the secretary of state. It is quite possible that the legislature will be asked to enact this recommendation into law. As the expenditures of the State increase and the administrative operations of the several state agencies become more ramified the

only efficient method of procurement is to have the purchasing activities of these groups under the control of a single official responsible either directly or indirectly to the chief executive.

Printing

In accordance with the constitution the legislature has enacted laws governing the procurement of its printing needs.⁶ All printing needs of the General Assembly are met by having the work done and the printing supplied under contract after advertisement for bids and the furnishing of specifications. The advertisement must take place in the papers of general circulation throughout the State. The Legislative Reference Bureau is charged with responsibility for the advertising and for the furnishing of the specifications. The bids are presented, sealed, to the chairmen of the Senate and House Committees on Printing. Performance bonds are required of successful bidders.

From time to time charges are made that legislative printing costs are excessive. In 1953 the secretary of state spent \$20,000 to print the session laws for that year, but inasmuch as a fairly generous supply of these laws are made available to the several administrative agencies and to interested citizens the item does not seem too great. Perhaps some retrenchment could be made in respect of the mimeographing of bills and resolutions, but in general there seems to be no real abuse of the printing privilege. Within recent years the secretary of state's office has tried to reduce the cost of legislative printing, and this effort appears to be partially successful.

TREASURY MANAGEMENT

Fiscal management includes the machinery by which revenue is covered into the State treasury. The Constitution of 1897 was the first to make the treasurer a constitutional officer. Previously, he had been appointed by the legislature. He must still settle his accounts with the General Assembly or a joint committee thereof,⁷ but his right to office is independent of that body. He, of course, is strictly controlled both by the constitution and the statutes in making disbursements. No moneys may be paid out of the treasury except by act of legislature,⁸ and no payments may be made without certification by the proper officers.⁹

Custody of Funds

The treasurer has had a difficult time in getting jurisdiction over all the public money. It was not until 1931 that the General Assembly moved toward the establishment of a common fund under which all state income would be covered. Prior to that time more than fifty state agencies maintained their own funds, and many of them banked these at their discretion.

Under prodding from the banking fraternity and the commercial interests of the State, the General Assembly, in 1931, began the process of bringing all state moneys within the custody of the state treasurer. The uniform fiscal year was established, and the number of separate funds was reduced considerably. Today only a half dozen special funds exist.

The General Fund

Finally, in 1939, steps were taken by the lawmakers to establish one general fund into which all receipts from whatever source would be covered, and out of which all expenditures would be made.* One of the factors bearing upon the establishment of the general fund was the influence of the business interests in the State who were in favor of using surpluses in the highway and school funds for general expenses rather than allowing increase in taxes. Private welfare agencies also were opposed to earmarked funds because they felt that they would be deprived of a larger share of the appropriations that might be theirs if the moneys received by the State were placed in a single fund. The rural areas generally favored the retention of earmarked revenues, believing that a central fund encouraged extravagance, but Wilmington insisted on the latter. Backed by influential interests, the urban demand was met.¹⁰

The One Fund Law¹¹ theoretically marked an advance in public finance in Delaware. Actually, however, the legislature has not refrained from granting financial concessions to certain favored agencies. The highway department has been permitted to retain unspent funds, appropriated for general purposes, in a separate account for reconstruction of roads.¹² Several of the separate accounts that are now operating have resulted from provisions in Federal grants-in-aid programs. One agency—the State Park Commission—banks the funds that it receives from its operations. Efforts are now underway to have this unit turn in its receipts to the General Treasury under a special account. There is demand on the part of certain pressure groups to have the income derived from gasoline and vehicle taxes earmarked for the exclusive use of the Highway Department.¹³

If comprehensiveness and unity are to be achieved in the budgetary process, there must be an earnest effort to place the entire return from State revenue in the general treasury, free and ready to be used to meet the total requirements of government. That this is an ideal too perfect to be wished is obvious when the history of fiscal management is reviewed. Yet the logic of fiscal unity is undeniable. The concept of fiscal unity has a way of forcing itself into the thought patterns of those charged with handling of the public purse. Furthermore, it behooves the governor, if he is really intent upon political leadership, to demand that the entire fiscal operation

* Funds from the Federal government for certain agencies such as the Agricultural Experiment Station go directly to those agencies.

be within the scope of his initiative. Any move that tends to give an administrative agency financial independence makes the fixing of responsibility for fiscal management extremely difficult.

Delaware is one of the few states that has approximated the ideal of placing all state moneys in a single fund. Public administrators and fiscal management authorities generally agree that there should be a common, single fund from which public moneys would be appropriated. Yet in spite of this very worthwhile effort in Delaware there are several interest groups that make it almost impossible for the legislature to maintain the concept of the general fund. It will be exceedingly unfortunate if these interest groups are able to break the pattern that has been established and force the State to return to the aggregate of special funds that plagued Delaware for the first century and a half of its existence as a commonwealth.

General fund receipts are deposited daily to the credit of the state treasurer in the Farmers Bank, a state chartered institution, three of whose directors are appointed by the governor. The Farmers Bank is the official state repository; it has three branches—one in Wilmington, one in Dover, and the other in Georgetown.

Expenditure Procedures

It is in the setting up of procedures to cover the expending of appropriations made to the several state agencies that the Delaware fiscal practice gives evidence of inadequacy. According to law, each agency, when it receives an appropriation, proceeds to allot that appropriation for the purposes set forth in the budget. Acting under statute the state auditor creates accounting codes and furnishes the agencies with these together with a statement of the amount set up for each code during the biennium. The codes contain the designation of the fund from which the expenditure is to be made, the designation of the agency (for example the Secretary of State's Office is Code No. 0120), the classification of the appropriation such as salary, printing, office expense, and so forth, and the amount allotted to each item. No transfer of an allotment may be made by an agency within its own budget except upon the approval of the Budget Commission. If this approval is granted the state auditor is notified, and he makes the transfer.

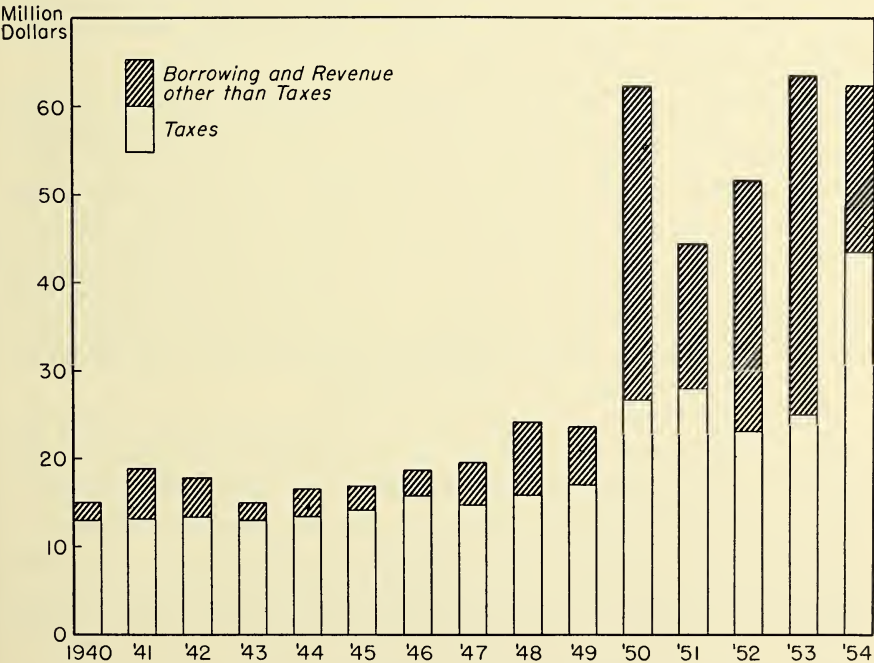
The auditor's office has spent a great deal of time and energy in establishing an accounting procedure that would give it a continuing surveillance of the fiscal operations of the agencies. In spite of such arrangements, there is evidence that arbitrary charges are made to accounts because "funds are available in such accounts even though the purpose of the expenditure may be more closely identified with other accounts."¹⁴

By making the full appropriation available for the entire biennium the legislature prevents the establishment of proper accounting controls. By placing the auditor, an elected official, in charge of the accounting proce-

dures the statutes have denied the chief executive an important budgetary control. The governor should be given accounting control so that he would be able to make a periodic check of agency expenditures and general administrative activity. The fact that by law accounting is now in the hands of the auditor makes it necessary for the budget commission to work closely with that officer in the handling of the preaudit and accounting procedures generally. Originally, the General Assembly merely asked the auditor for a report, in postaudit fashion, of the fiscal activities of the State's agencies, but as the administrative operation increased the auditor was made to serve also as comptroller. Hence, in Delaware accounting and auditing are fused in the same office. Expenditure procedures have not been placed under the supervision of the executive. The lack of clear executive control over the administrative agencies by means of the accounting device makes for an inefficient surveillance of the administrative function.

THE STATE DEBT

As mentioned in the preceding chapter, there is a decided tendency to meet rising expenditures by public borrowing. This method of obtaining revenue has always met with severe opposition in Delaware especially from businessmen and conservative interests generally. Yet this very conservatism, paradoxically, is the cause of an increasing public indebtedness,



GENERAL REVENUE AND BORROWING, DELAWARE, 1940-1954

largely because of the refusal to institute an adequate tax program to meet the growing need for public funds. Delaware, in 1950-51, ranked forty-eighth among the states in the comparison of total state and local taxes paid to the total income received by its citizens.

Its Recent Growth

Prior to 1947 the State debt was nominal. During the early 1940's it had remained between \$4 million and \$5 million. Beginning in 1948, an upward movement set in, which by 1952, had brought the gross debt of the State to an unprecedented figure of \$98 million. Approximately half of this amount was the result of a series of bond issues to build the Memorial Bridge over the Delaware River. This much needed span cost nearly \$50 million.* The bonds covering this operation are not guaranteed by the credit of the State, the only responsibility assumed by the State being the allocation of the tolls from the bridge to meet the interest and retirement of this debt.¹⁵

Even with the exclusion of the bridge indebtedness, the State's obligations in 1954 amount to over \$60 million. Much of the debt backed by the full faith and credit of the State has been borrowed to build and maintain highways, to procure adequate educational facilities, and to develop a modern welfare program. Most of the money raised for highways was needed to restore facilities to the level at which they were just prior to World War II. In some instances the funds were used to build new four-lane highways, particularly in the northern section of the State where the increased traffic required new roads.

The borrowing for educational purposes was in part the result of a failure to look ahead and chart the course of the rapidly growing population. Communities sprang up overnight, housing projects by the dozens were started, but little attention was paid to the desperate need for new schools. Not until building costs had been hit by the inflation following the outbreak of the Korean War did the State turn with energy to the replacement of outworn school buildings, the erection of new plants, and the development of something approaching an adequate salary system for the public school teachers. Thus, in the matter of indebtedness incurred for school purposes, the State became the victim of lack of foresight.

If the bridge bonds are excepted, the per capita state debt in 1952 was \$157; if the gross debt is considered, the figure stood at \$306, whereas the national average among the States was \$42.50. Delaware has the highest per capita debt among the states.

The daily press is constantly pointing to the increasing per capita figure. It should be noted, however, that analysis on a per capita basis is not very enlightening. First of all, states that are small in population show up badly

* Including the purchase of the ferry system that the bridge replaced, which purchase was part of an agreement with the utilities owning the ferry company.

TABLE 11

STATE DEBT IN DELAWARE, INCLUDING GROSS DEBT AND DEBT UNDER
FULL FAITH AND CREDIT, 1940-1954

<i>Year</i>	<i>Gross Debt (000)</i>	<i>Full Faith and Credit (000)</i>
1954	\$125,035	\$76,791
1953	110,495	60,548
1952	92,718	40,837
1951	83,205	35,309
1950	78,588	36,838
1949	48,218	8,218
1948	47,231	7,231
1947	4,019	4,019
1946	4,250	4,250
1945	4,502	4,502
1944	4,712	4,712
1943	5,076	5,076
1942	5,307	5,307
1941	4,328	4,328
1940	4,408	4,408

in per capita comparisons because of the general overhead that must be met by all states; and secondly, unless a comparison between borrowing and taxation is made, the debt figure may not reflect a true picture of the financial burden carried by the individual citizen.

There is no doubt, however, that increasing debt is placing additional burdens upon the taxpayers. In 1953 the State paid over \$2,600,000 in debt service, whereas in 1940 the total debt charges amounted to but \$103,000. These figures help depict the changes that have occurred in state finance in Delaware. In 1940 the total expenditure of the State was \$14 million. Today over one-seventh of that amount is paid in debt maintenance alone. In the early part of 1953, for the first time in fifteen years, the State was compelled to borrow (in the amount of some \$2 million) to meet current operating expenses. Unless a realistic approach is taken toward taxation, deficit financing seems to be the only alternative.*

Debt Administration

The state debt has been incurred primarily for the meeting of highway and educational needs. Bonds are issued after authorization by the legislature, which requires a three-fourths vote of all the members of each house. The governor, secretary of state, and state treasurer announce the issues and they serve as committee for the sale of the bonds. Bids are turned into them, the secretary of state being the administrative facility for

* For an explanation of this situation, see *Wilmington News*, February 16 and 17, 1953.

the reception and recording of the bids. Usually one investment house will take the issue, but if the amount involved is exceedingly large (such as the \$9 million issue of 1953) then a syndicate may handle it.

The legislature sets the maximum rate of interest to be paid. In 1949 to 1951 the state paid only 1½ per cent, but recent issues have brought as high as 3 per cent. All bonds are exempt from Federal taxes.

Delaware has no sinking fund, but a small percentage of the debt is retired annually. In recent years it has been between one and two per cent, and this fact has been cause for alarm. Statements appear from time to time demanding the setting up of a sinking fund and for the establishment of a debt limit, but so far nothing has come of this movement. Proposals for inaugurating serial bonds have been made, but so far have not been adopted.

If bonds are sold for highway maintenance or construction or for school building, separate accounts are set up and the proceeds placed in them. In a way this is a deviation from the idea of the general fund, but apparently it is easier to raise money if specific projects are mentioned in the prospectus than if the issue covers general state purposes.

ACCOUNTING AND AUDITING

Although budgetary power rests firmly with the governor, he has been given little opportunity to supervise the execution of the budget. Actual accounting controls in the sense of the current audit rest with the state auditor. The statutes have extended a degree of control over expenditure to the Permanent Budget Commission (on which the governor serves and which he tends to dominate because of his appointments thereto). The commission is authorized to "audit, inspect and examine the accounts and affairs of any agency in [the] State at such times as it deems expedient for the supervision of the budget." The commission has employed the services of an accountant to aid it in carrying out this injunction.¹⁶ The commission also employs auditors and certified public accountants to make annual, commercial post-audits of the books of the state agencies. The governor usually recommends the appointments to the commission. Hence, the governor by his position in the Permanent Budget Commission has the means for keeping at least a partial check on the execution of the budget.

Actual control over accounting procedures is in the hands of the auditor, a constitutional, elective officer, who is not responsible to the governor. Before any moneys covering obligations of the State may be paid out by the treasurer, voucher must be drawn, approved by the auditor (who sees that it conforms to the procedure established by his office), and a warrant issued to the state treasurer by the auditor.¹⁷ The auditor may refuse to approve for payment any invoice that has not been presented to him or that

would more than exhaust the appropriation from which it is to be paid, or that is not in accordance with the contract under which the indebtedness was incurred.¹⁸ Any advances made to any agency in anticipation of a debt can only be made with the approval of the auditor. Although the law says that transfers of funds must bear the approval of the budget commission, there is provision in the code that states that no such transfer may be made within an agency without the prior consent of the auditor.¹⁹

Although the auditor may make such requirements as will safeguard and systematize the expenditure of public money, he may not make any requirement that will unnecessarily interfere with the prompt payment of the amounts due once they have been verified as meeting the terms of their authorization.

In addition to the current audit and the commercial postaudit made by the State of the several agencies, the Federal government also audits the accounts of those agencies disbursing funds under Federal grant-in-aid programs.

FISCAL POLICY IN DELAWARE

Fiscal policy in Delaware does not follow a well-defined theory. Two forces seem to be pulling in opposite directions. One is exerted by the more conservative business and rural interests of the State, which demand that taxation be kept at a minimum yet recognize the need for public expenditure in a growing number of instances; the other is coming more and more to be backed by certain of the liberally minded businessmen and by those groups interested in the schools, the welfare agencies, health organizations, and in the promotion of the public safety, which insist upon a positive use of the public purse with the concomitant use of the tax power. This latter group believes that the taxing powers should also be used as instruments in the general economy. This thinking is gradually seeping into the official thought of the State. Governor Boggs, while suggesting that state expenditures be examined carefully for the elimination of waste, has contended that "the amount of money spent is perhaps less important than the way it is spent."²⁰

The big problem in effecting an articulate financial policy in the State is that posed by the power of the legislature vis-a-vis that of the governor. The legislature, representing to an inordinate degree those elements in the population that have not to this time become fully aroused to the need for adequate revenue to meet the pressing needs of a growing complex society, has attempted with sincerity to reach a feasible solution to the question of how much for what. That the legislature is ill-equipped both from an ideological and from an administrative standpoint to find this answer is patent. Ideologically, they do not represent the values that are held by the

majority of the articulate citizenry, and administratively, the legislature does not have the machinery to gather the data on public need and public ability to meet this need.

The governor, on the other hand, has facilities for gathering statistics concerning the pressing social needs of the State. The governor furthermore is in a position to evaluate the consequences both political and social of a failure to meet these needs. His is the over-all view, unclouded by localism and unimpaired by the need to truckle to the articulate few within a given bailiwick.

It is this ability of the governor to escape from the particular that gives his office the opportunity to make realistic decisions regarding the use of the public purse. Certain party members, dependent upon the forces of localism for their power, find it difficult to lend support to the governor in his efforts to approach the financial policy from an over-all point of view. Whether this difficulty will be remedied in view of the shifts in voting strength that have occurred within the State remains to be seen. Much depends, of course, upon the vitality and courage of the man occupying the governor's chair. Certain formidable weapons rest with the governor, particularly in the matter of fiscal control. Because the chief executive wields fiscal power he has a tremendous influence over the determination of public policy in Delaware.

NOTES

¹ *Revised Code of Delaware* (1953), Title 29, secs. 6301 ff.

² *Revised Code of Delaware* (1953), Title 29, sec. 6332.

³ *Revised Code of Delaware* (1953), Title 29, sec. 6339.

⁴ For a popular discussion of the relationship between the contingency fund and the budget, see *Wilmington News*, February 17, 1953.

⁵ *Constitution of Delaware* (1897), art. XV, sec. 8.

⁶ *Revised Code of Delaware* (1953), Title 29, ch. 11.

⁷ *Constitution of Delaware* (1897), art. II, sec. 24.

⁸ Art. VIII, sec. 4.

⁹ *Revised Code of Delaware* (1953), Title 29, sec. 2708.

¹⁰ See *Wilmington Journal-Every-Evening*, February 4, 1939. Also, *Georgetown Sussex Countian*, September 12, 1940.

¹¹ 42 *Delaware Laws* 77 (1939).

¹² 46 *Delaware Laws* 128 (1947).

¹³ See listing of Fund Codes and Title by State Auditor, July 21, 1948.

¹⁴ See Public Administration Service, "Report of Accounting and Related Fiscal Practices in Delaware" (1954), p. 33.

¹⁵ *Revised Code of Delaware* (1953), Title 17, sec. 318. The State further agrees not to construct another bridge or tunnel or other crossing or permit same to be constructed within a distance of ten miles to the north or twenty miles to the south of the Memorial Bridge. Sec. 313.

¹⁶ *Revised Code of Delaware* (1953), Title 29, secs. 6314, 6316.

¹⁷ *Revised Code of Delaware* (1953), Title 29, secs. 6515, 6516.

¹⁸ *Revised Code of Delaware* (1953), Title 29, sec. 6518.

¹⁹ *Revised Code of Delaware* (1953), Title 29, sec. 6528.

²⁰ See editorial in the *Wilmington News*, February 3, 1953.



CHAPTER 10

Personnel Management

ANY STUDY of state government must include a treatment of the three basic elements in the governmental process, namely, administrative organization, financial management, and personnel administration. The previous chapters have included a treatment of the first two, and the purpose of this chapter is to describe and analyze the factors determining the staffing of the State offices. Perhaps there is nothing of greater importance to modern government than the recruitment and retention of efficient public personnel.

DEVELOPMENT OF PUBLIC PERSONNEL POLICY

Until the close of the last decade the average Delawarean gave little heed to the problems of staffing the governmental departments. Now and then, if he were asked, he might make the remark that only political hacks were in the state jobs. If pressed further, he would probably have exhibited little knowledge of public personnel functions and would have shown little interest in them. Several factors were responsible for such attitudes. Basically, the ruralism of the State permitted few people to be employed at state level. Secondly, the nature of the State's work was such that its employees did not come into daily contact with large numbers of the citizenry. Thirdly, the costs of government were so low that the average resident did not pay much in taxes directly to the State, and thus he did not feel personally involved in the process of government.

With the close of World War II the situation vis-a-vis the citizen and the functions of government at state level changed appreciably. Today the average citizen is not only confronted with increasing state regulation of and intervention in his daily life but he is also paying out increasing amounts to meet the rising cost of government. One criterion by which

this increasing importance of government is measured is the growing number of people employed by the State.

In 1940 the number of state employees exclusive of those engaged as public school teachers was 2,131. In 1952 this number had reached 5,550 at a payroll cost of \$1,350,000. By 1954, the number had increased to 6,100 and the payroll had increased to close to \$2,000,000. According to the Bureau of the Census in the latter year the average number per 10,000 population employed in Delaware was higher than the average number in the states collectively. Only in the number of police employed was the figure for Delaware lower than it was throughout the Nation.

This high rate of government employment did not exist in 1940, and the increase can be attributed to the growth of state functions in Delaware during the intervening decade. Public welfare administration, health and hospital organization, and highway organization have all been expanded.

TABLE 12
STATE EMPLOYMENT IN DELAWARE ACCORDING TO FUNCTION, 1954

<i>Function</i>	<i>Number</i>
Education	2,136 ^a
Highways	1,185
Health	1,171
State Police	156
Public Welfare	148
Agriculture and natural resources	268
Miscellaneous	1,036
	<hr/> 6,100

^a Excluding teachers in the public schools.

Not only has there been increased work in these areas with attendant growth in personnel, but new activities have been added to the government's operations. Welfare and highway administration are now exclusively state responsibilities. Several operations that were formerly only quasi-public have become completely state-run. In turn the over-all supervision of these administrative groups has increased. In the auditor's office and in the central staff operations of the agencies themselves increases in personnel have occurred. There has been a steady expansion of the financial organization at the state level and with this expansion has come added personnel.

Highways and health organization account for the most precipitous increases. In 1948 total personnel employed in highway administration (not including the State Police) was 599; in 1954 this figure had reached 1,185. There were only 197 people employed in the state health organization in 1940, whereas in 1954 there were 1,171.

With the overwhelming growth of public personnel in the state have

come certain basic problems concerning the administration of personnel. The origins of these problems, however, are not always discernible to the casual observer. The beginnings of the current difficulties can be found in the extreme localism that has pervaded the State until fairly recently, and in the tendency to reward public servants at the state level inadequately. Localism has made it difficult to get public funds for state operation. The inadequacy of governmental salaries is probably allied with what is sometimes called "pinchpennyism," and its roots can be traced to the feeling on the part of a large number of citizens that state government is superfluous. This feeling has been abetted by the fact that during the nineteenth and early twentieth centuries the top level administration in many state agencies was performed by volunteers and part-time employees.

With the arrival of modern concepts of governance and in face of the growing demand for more state aid in the areas of welfare, health, and education, the need for full-time, well-paid employees became apparent. Yet the old attitudes would not down easily. It was one thing to recognize the need for efficient personnel, but it was another to furnish the funds necessary to provide this help. Even at this late day, after decades of difficulty in getting competent public servants the average pay for full-time state employees in Delaware is less than the national average among the states.¹

BASIC PROBLEMS OF PERSONNEL ADMINISTRATION

Four basic problems exist in the area of personnel management in the State of Delaware. The first of these, the question of how to provide an efficient public service in face of the prevailing spoils system, has made it extremely difficult to meet the other three problems, namely, those of classification, compensation, and retirement.

The Spoils System

The spoils system has long been looked upon in Delaware by the mass of the politically articulate as the natural if not the best way to recruit public employees. During the nineteenth century little serious thought was ever given the idea of installing a merit system of employment. It was not until the state services expanded that a civil service based on a merit system came to be advocated.

Every governor since 1933 has advocated the adoption of some type of merit basis for public service. Within the past ten years steady efforts have been made to create a merit system of appointment at state level, but little success has attended the movement. In 1947 the first systematic effort was made to study the problem. In that year Governor Bacon appointed a group of prominent citizens to study the over-all matter of civil service and, specifically, to make recommendation regarding the classification of state

jobs. Although a rather comprehensive report with recommendations was finally forthcoming from this group, its efforts were without any immediate avail. In 1951, after a rather partisan struggle between governor and legislature, a civil service bill was enacted by the legislature. It was unacceptable to the governor, however, because it served to "freeze" workers in their jobs and it was vetoed. This is the closest the State has come to having a state-wide civil service act.

In 1952 both parties advocated civil service reform and the institution of a merit system, Governor-elect Boggs, in that year made a strong plea for a civil service act so that "able men and women would be attracted to public service."² Experts from other states were brought to Delaware to help frame a civil service bill. A civil service board was proposed; it was to be headed by a director of state personnel, responsible to the governor, with an advisory board of three members. The bill encountered opposition in the Senate. Some senators objected to the way the bill was drafted, others were afraid it would "freeze" certain incapable persons in their jobs. One senator was alleged to have said that the bill was "basically wrong" because it would "ultimately destroy the spoils system and take away the incentive for men to get out and work for the party."³ Party lines were crossed and the administration measure suffered defeat.

Commenting upon the defeat, Senator Benger, then majority leader, said that "Delaware will never get civil service because the party in power will be interpreted as trying to freeze its job-holders in office, so the opposition will never go along with the idea."⁴ It is undoubtedly true that partisanship is one of the chief reasons for the continuation of the spoils system. As Delaware politics becomes more of a two-party struggle each party is going to be extremely careful not to lose the benefit of the patronage.

The intense countyism prevalent in the State is another reason for the maintenance of the spoils system. Each county has the right to share in the appointments to public office; institution of a merit system might interfere with this prerogative.

The chief area of attack by the adherents of civil service reform is the State Highway Department. Although turnover occurs in other departments when a new party comes to power in Dover, the operation of the spoils system in the highway organization is extensive and gains wide publicity in the press.⁵ Serious concern is expressed by many articulate citizens respecting the need for and the wisdom of removing many competent engineers and road men each time party fortunes change. Constant comment is heard to the effect that the "engineers and maintenance men should be left alone." Of course, such statements are unrealistic under the prevailing arrangements. The top highway jobs are much too lucrative and the lesser positions too large in number not to be considered fair game by the practicing politician.

PERSONNEL ADMINISTRATION

In spite of the fact that the spoils system has been employed as the chief means of staffing public offices in Delaware serious attention has been given to certain phases of personnel management. Classification, compensation, and retirement have been the main areas of activity.

Classification

Interdepartmental job raiding, whereby one department entices workers from another, became a serious problem during World War II when employees were extremely hard to get and to keep. The Council of State Executives in 1941 and again in 1943 made recommendations to the several departments to practice self control. It was also suggested that pooling of clerical help be adopted. With the close of the war the situation was aggravated because of the tight labor market and the expansion of state services. Between 1947 and 1951 several plans were suggested regarding the institution of a classified system. In the latter years, Governor Elbert N. Carvel requested that the council appoint a sub-committee to study the problem and report to the General Assembly in 1953. Nothing came of this effort although the council did have a study made of the question.

The present governor, J. Caleb Boggs, has stressed the need for a merit system of public placement. Commenting on the general problem of public employment in Delaware, the secretary of state, J. N. McDowell, was of the opinion in 1954 that inter-departmental raiding of workers was one of the greatest obstacles to efficient operation at the state level. Public apathy is another serious obstacle to be overcome. The political forces favoring the retention of the spoils system are very strong. On the other hand, the fight for civil service reform is by no means over. Determined groups are engaged in a steady struggle to bring about the removal of the spoils system, and they have been abetted by the efforts of the Federal government to establish state merit systems for those jobs paid out of Federal grants-in-aid in the fields of public health, welfare, unemployment compensation, and mental hygiene. What system there is in Delaware for personnel administration has come about through this means.

Compensation

Some attempt has been made both by the legislative and the executive branches of the government to set up a salary scale. Clerks, custodians, and general laborers receive a bit less than would be paid for similar services in private employment. Annual salaries among the basic clerical help in state offices run between \$2,500 and \$4,000. Janitors and other workers concerned with building maintenance receive the same range with the

skilled artisans grossing nearly \$5,000 as a maximum. Laborers make about \$2,500 a year.

In the middle management ranks salaries are quite variable. The range lies somewhere between \$4,000 and \$7,500, but it is not surprising that many office managers and supervisors receive less than those who have equivalent jobs in private employment.

Top level administration consists of the executive secretaries, the directors of agencies, and the top-flight engineers and maintenance men in the highway department. Salaries here range from \$7,500 to \$15,000 with the median near \$8,000. Only recently have salaries in these jobs become high enough to attract very competent persons, although Delaware was fortunate in having many able administrators serve for very inadequate compensation over a long period of years. In part this good fortune may be attributed to the spirit of voluntarism that pervaded the State.

Retirement and Pensions

Each State employee is under one of several State retirement and pension plans depending upon his employment. The average state worker is eligible for a state pension ranging from \$60 minimum to a maximum of \$250 if he has worked a minimum of fifteen years and is over sixty years of age. Retirement is optional after sixty and mandatory at seventy. The benefits are based on the salary of the worker during the five years next preceding his retirement. Pensions are set at a portion of his average monthly salary over the entire course of his employment. Disputes over pension rights come before the Arbitration Commission consisting of the governor, the state Treasurer, and the head of the agency involved. Associated with pensions are disability benefits, and the administration of these claims is handled by the Disability Commission.

Instructors and administrators at the state college and university come under an annuity plan to which they must subscribe on reaching the age of forty years. Retirement is at sixty-five with provision that employees may continue on after that year with the consent of the college administration.

Federal Social Security benefits are now available to most state workers. The sums derived from this source are deducted from the maximum permitted under the state pension program.⁶

Although the minimum pension is not sufficiently high to meet mounting costs of living much has been achieved in the matter of retirement benefits in the course of the past decade. Delaware has a rather liberal system and the costs to the workers is nominal.

The State Police have a separate pension system. It is administered by the State Police Pension Board consisting of three members appointed by the governor, the Highway Department, and the state police officers.

The State Police personnel contributes to the fund and the State makes a similar contribution. If additional moneys are needed to meet pension requirements the treasurer may use funds allotted to the Highway Department.

Merit System for Personnel Administration

Under compulsion from the Federal government, five state agencies in Delaware have had to adopt a scheme for the hiring of their personnel on a merit basis. These agencies are the Department of Public Health, the Department of Public Welfare, the Mental Hygiene Clinic of the State Hospital, the Unemployment Compensation Commission, and the Commission for the Blind. By common agreement, based upon the Federal statutes, these agencies now recruit their personnel by means of a competitive examination. If any one of these agencies fails to do so the Federal funds in the form of grants-in-aid to them are cut off. Hence, they have little choice but to conform to the Federal regulations.

In November, 1939, the Social Security Board, then in the Federal Security Administration, issued a set of regulations compelling all state agencies using funds disbursed by that board to enter into an agreement with the Federal authorities whereby all state employees in the agencies concerned (except the directors) would be hired on a merit basis of recruitment and subject to civil service rules in their employment. Following the issuance of these regulations each of the above named agencies entered into an agreement with the Social Security Board. Instead of each agency setting up its own personnel administration the five groups got together informally and created the Merit System for Personnel Administration.

The merit system is under the authority of a council, made up of three persons and a supervisor. The council members serve for three years on a staggered basis; they are chosen by the five agencies under the system. The supervisor is chosen by the executive directors of these five agencies, and the position is subject to examination and other qualifications. The supervisor reports to and is under the direction of the council.

The legal status of the merit system as far as Delaware is concerned is a bit confused. On December 14, 1939, the state attorney-general, in reply to a request by the commissioner of the Unemployment Compensation Commission, stated that no agency had authority in and of itself to enter into agreements with the Federal Government respecting personnel recruitment and employment. He held that the only authority for such action was the legislature, and inasmuch as that body had not entered into any agreement the merit system as constituted was illegal. In spite of this opinion the system continued to function, largely because no Federal funds would have been forthcoming if the agreement had not been lived up to. Again in 1945 the supervisor of the merit system wrote for an opinion

from the state attorney-general, and again he received the same reply. In 1951, however, the General Assembly in establishing the Department of Public Welfare, stated that

nothing in this act shall interfere with the *continued* [italics mine] operation of a merit system of personnel administration for positions heretofore placed under such system by agreement between State and Federal authorities.⁷

Each biennium the several agencies involved contribute to the budget of the merit system (which in 1953-54 amounted to approximately \$10,000). Inasmuch as these moneys must show in the budget estimates of the agencies and are finally incorporated in an appropriation act, it would appear that here again the legislature has given a sort of tacit approval to the entire arrangement. In 1954 the Merit System for Personnel Administration celebrated its fifteenth year of continued operation.

The Federal Civil Service procedures are followed by the merit system. The functions of the merit system are (1) recruitment, which consists of the announcing of jobs, the holding of examinations—sembled, unsembled, written and oral—the grading of papers and the formulation of a register; and (2) certification of successful examinees to the department concerned. Appointment is on the basis of the rule of three; that is, the appointing officer may select one from the top three on the list of those who passed the examination. Appointment is done by the department, not by the merit system. Appeals based on the rules of the system can be taken to the council after a hearing before the executive director of the agency involved, but final decision rests with the appointing agency.

The number of employees covered under merit appointments is not great. The average since 1950 has been about 350. The largest number is found in the Department of Health with welfare a close second. No person employed under the regulations of the merit system may engage in political activities (except voting) and cannot be asked for or give a political levy. The system, as it has been administered in Delaware, works without any noticeable political influence, and enjoys the confidence of those working under it. Nevertheless, it covers only a slight portion of the total state employment and accordingly has little effect in setting the tone of public employment. Suggestions have been made concerning its wider applicability, but the tendency toward retention of the spoils system prevents any extension of the merit system to other state agencies. Yet it is a beginning in the long fight for improved employee relations in the state government, and its presence in the state system acts as a deterrent to the rapacity of grabbing politicians in their search for spoils.

OUTLOOK FOR THE FUTURE

There are several questions that come to mind when the future of the

state service in Delaware is contemplated. The first is how many civil servants will there be? Obviously, the answer here is not easy because in a small state with an expanding population the proportionate increase in the number of public personnel will not be as great as that in a large state with an expanding population. Field offices for one thing are not as necessary in Delaware where distances are not as great as they would be in a state with the dimensions of Texas.

Furthermore, if present trends continue, the population will remain concentrated in the northern section of the State making services rather easy to provide. Many of the larger departments have moved their main offices to Wilmington and thus do not need a large staff in the State capital to supervise their departmental functions. The concentration of population in New Castle County should be a decisive factor in limiting the number of future state personnel.

Some departments apparently are reaching their optimum number of employees, for example, the Highway Department. Although newer and better roads will be built in Delaware the total mileage will probably not increase significantly, thus maintenance is nearing a maximum and the number of highway employees should begin to level off. Agriculture service and conservation, which in many states require large staffs, are diminishing in importance in Delaware. The number of state employees engaged in these functions is perhaps now at its maximum. Educational facilities will undoubtedly increase, necessitating greater employment of teachers. Most of this increase will be at the local level in the special districts and will not involve state personnel.

The second question that arises concerning state service is who will be responsible for the personnel management of the future? Much of course depends upon whether a merit system is imposed for most of the state jobs. Assuming that some sort of civil service system will be instituted, will such matters as recruitment, classification, salaries, rest with the separate agencies or be concentrated in a central agency? Here again the fear of centralization will no doubt enter the picture. It has been proposed that personnel management be placed in a state coordinating agency that would have general powers over administration.⁸ It is hard to conceive of the Highway Department with its relatively large number of employees readily consenting to having its recruitment, classification, and promotion determined by a central agency. This intense departmentalism, found in several of the larger agencies, is a decided deterrent to any movement toward centralized personnel management.

The third, and perhaps the most important question concerning the future of personnel, is how a state career service based on the merit system of recruitment can be fashioned. Delaware, small and compact, offers distinct possibilities for the development of a well-integrated, inspired group of public employees. There is a strong tradition favoring the re-

tention of informal relationships among state employees, and it may be that the personnel arrangements of the future will have to be built around this feeling. Certainly the institution of a monolithic personnel structure such as are found in large eastern states would receive little approval. On the other hand close associations existing among many of the civil servants could be played upon to develop an *esprit de corps* among them once job classification, systematic promotion, adequate salary scales, and improved retirement programs were introduced. Most of the state workers favor a civil service system which would give them a feeling of security in their jobs. Fast disappearing are the old-line political hacks who considered the holding of state jobs merely as ancillary to their political activities. Efficient, well-trained, and loyal public service is an absolute requirement to the function of a modern state. This service can be built if due heed is paid to the factors involved in its structure. It would appear that Delaware is on the point of making a move toward this goal, and with public support there is a good chance for success. Public apathy is perhaps the greatest present deterrent to the institution of a competent career service in the government of Delaware.

NOTES

¹ *Wilmington News*, May 29, 1954.

² *Ibid.*, December 4, 1952.

³ *Ibid.*, May 12, 1953.

⁴ *Ibid.*

⁵ *Ibid.*, January 13, 1953.

⁶ See 49 *Delaware Laws* 100 (1952).

⁷ 48 *Delaware Laws* 133 (1951).

⁸ *Wilmington News*, February 26, 1953.



CHAPTER 11

The Judiciary

THE JUDICIARY of Delaware has long played an honored and important role in the process of government at both state and local levels. The courts were the first political institutions to be established in the colony, which is now the State of Delaware.

HISTORICAL BACKGROUND

Prior to the coming of the English to the Delaware River area the Dutch had organized their settlement there into three judicial districts. This governmental arrangement was continued by the English when they assumed sovereignty of the territory. Although the grant of power to William Penn, as proprietor, included in it the judicial authority, he did little to interfere with the basic three-district system of courts. These districts were the antecedents of the present counties.

When Delaware became a state one of its first acts was the establishment of a judicial system. County tribunals were continued (a carry-over from the three-district system), but final appeals instead of going to the Privy Council in England now came before a council composed of the president of the State and six representatives of the General Assembly. The county judges were appointed by the General Assembly and served during good behavior.

The Constitution of 1792 created a judiciary separate from the executive and legislature. At the bottom of the judicial organization were the justice of the peace courts. These were followed by courts of common pleas, one sitting in each county. There was a supreme court to handle felonies, and a court of chancery, presided over by a chancellor, to handle cases in equity. Final appeals were taken to a court of errors and appeals,

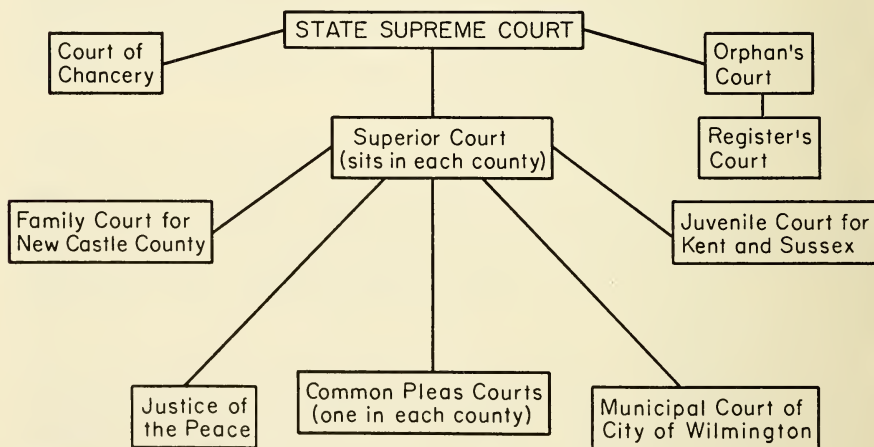
on which sat the judges of common pleas, the supreme court, and the chancellor, provided they had not heard the appealed case in a lower court. The basic provision of the Constitution of 1792 making the courts separate and distinct from the political branches of the government has been followed to this day.

The present constitution provides for a separate supreme court whose three justices have no other duties than those connected with the hearing of final appeals.* Beneath this tribunal are the court of chancery, the superior court, the orphans' court, the register's court, and the justice of the peace courts.

Beginning in 1883, the legislature has created a series of inferior tribunals to handle specialized cases or to relieve the constitutional courts of some of their burden. These legislative courts are: the Municipal Court of Wilmington, the common pleas court in each of the counties, the Family Court for New Castle County, and the Juvenile Court for Kent and Sussex Counties. Several of the larger towns have been permitted, under their legislative charters, to establish aldermen's courts for the trying of infractions of municipal ordinances.

JUDICIAL ORGANIZATION

The judicial system of the First State has been designed by both the constitution and the legislature. In respect of the constitutional courts, the judiciary in Delaware is basically a state judiciary. The constitution provides for the following jurists, who are State judges: the five law judges



— denotes line of appeal

ORGANIZATION OF THE JUDICIARY IN DELAWARE

* Sometimes they are called upon to give advisory opinions to the governor.

who sit in the superior and orphans' courts; the chancellor and vice-chancellor, who preside in the court of chancery; the three justices of the supreme court. Likewise, the justices of the peace, provided for in the constitution, are considered to be members of the state judiciary, and they receive their commissions as officers of the State.

It is in respect of the legislative courts such as the Family Court for New Castle County, the Juvenile Court for Kent and Sussex, and the three common pleas courts, that we can speak specifically of county courts. In our analysis of judicial organization, however, the superior and orphans' courts will be treated within the general discussion of the county courts because these tribunals are held in the several counties even though the judges in these courts are state judges.

Although the justices of the peace are state officials, their work is done at the local level. Accordingly, we will discuss the organization of the justices' courts and that of the Municipal Court of Wilmington before taking up the county courts. In conclusion the organization and work of the court of chancery and of the State supreme court will be presented.

The Justices of the Peace

The constitution provides that the justices of the peace shall be appointed by the governor with the consent of the Senate. The term of office is four years. The number of justices' courts is determined by the General Assembly. The Revised Code of 1953 permits the appointment of twenty-seven justices for New Castle County, twenty-nine for Kent, and thirty-seven for Sussex.¹ Since 1940, however, there has been a decline in the number of justices actually appointed. At present there are only forty.

Jurisdiction of the justice of the peace courts is both criminal and civil. Criminal action comprehended by the justice of the peace consists of violations of the motor vehicle code, disturbances of the peace, trespass (where this is prohibited by statute or ordinance), game and fish law infractions, vagrancy, and general misdemeanors that the statutes have placed within this court's jurisdiction. Arraignments for crimes to be tried before higher tribunals come before the justices. In civil matters where the amount involved does not exceed \$500 the justice of the peace has jurisdiction. Most civil causes deal with action for debt or trespass. Trials in such cases are conducted in summary fashion, but a defendant may require a trial by referees if the amount involved is over \$5.00. Referees are chosen by the justice and they are sworn to render a verdict somewhat in the same manner as a common law jury. Very few trials are heard before referees.

In civil matters in Kent and Sussex the justice has jurisdiction over the entire county of the hundred from which he is appointed. In New Castle County he has jurisdiction within the hundred and in adjacent hundreds except where the plaintiff is a bona fide resident of the hundred in which

the suit is brought, in which case the justice has jurisdiction throughout the county.

Justices receive no salary, gaining their returns from fees and costs. They must make monthly accounting of all fines imposed by them and give the name of the constable charged with the collection of such to the state auditor. The State Code makes the justice strictly responsible for maintaining an accurate account of the running of his office, and he must certify to all actions of the constables acting under his jurisdiction.

Although the statutes require an accounting of the fines collected by the justice of the peace courts, there is no provision for administrative surveillance of the work of these tribunals. The justices are appointed on a political basis, no examination is required to see if they have any degree of competence for the handling of their duties, no training is given, and nothing has been done by the state to improve the physical facilities of the justices courts.

Few of the magistrates over the course of the past fifty years have been learned in the law. The fact that very few of these judges get more than a meager return from their work has made it extremely difficult to man these courts with qualified persons. The administration of justice at the justice of the peace level is performed on a completely amateur basis.

Several attempts have been initiated recently to rid the State of the justice of the peace system. Both parties in the campaign of 1952 promised to conduct a thorough survey of the justices' courts with a view toward their improvement. Several members of the State bar association have suggested that the entire system be replaced by stipendiary magistrates somewhat after the English manner, but it is extremely doubtful that the general citizenry would entertain such an idea at this time. Delaware citizens should, however, think seriously about the administration of these courts. Were it not for the fact that the bulk of minor criminal action occurs in the City of Wilmington and is handled there by a very competent municipal court, there would probably be a greater effort to improve the work of the justices' courts.

The Municipal Court of the City of Wilmington

The Municipal Court of Wilmington was established in 1883 by act of the General Assembly. This court is presided over by a principal judge, appointed by the governor for a term of twelve years removable by the legislature. His appointment is not confirmed by the Senate. The judge must be learned in the law and have, for seven years, practiced as an attorney before the superior court. The expenses of this tribunal are paid by the city council of Wilmington. There is a deputy judge, appointed by the resident judge of New Castle County. The clerk of the court is named by the principal judge, and he serves at the latter's pleasure. The jurisdiction is entirely criminal except in respect of certain municipal regulations

that partake of a civil nature. In general this court handles cases concerning misdemeanors.

Prosecutions in the municipal court are conducted by the city solicitor and his assistant upon what is known as informations or charges by the prosecutor that certain persons have committed the crimes for which they are being tried. There are no juries and no indictments. Appeals from this tribunal lie with the superior court sitting in New Castle County. The judge of the municipal court also serves as committing magistrate.

County Courts

The constitution does not establish a county judiciary. The constitutional courts are state courts, but in the case of the superior court and the orphans' court, provision is made that these courts will sit in each of the three counties. The constitution specifies that there shall be a resident judge for each county, and this judge sits with one or more of the other state judges in holding sessions of the superior and orphans' courts in the several counties.

In addition to the state judiciary established by the constitution, the legislature has created a series of county courts, chief among which is the court of common pleas.

The Superior Court. By constitutional amendment in 1951 general civil and criminal jurisdiction was placed within the purview of the superior court. The old courts of general sessions and oyer and terminer were abolished and their jurisdiction transferred to the superior court, which prior to the amendment had had civil powers only. Now this court has authority over all cases of a civil nature—real, personal, and mixed, at common law—and the authority reposed in it by statute. It hears cases involving felonies and certain misdemeanors given to it by the legislature. Appellate power extends to cases decided in the justice of the peace courts, the Municipal Court of Wilmington, the court of common pleas, and the family and juvenile courts. Appeals from several of the administrative agencies' rulings lie with the Superior Court.

This court sits with a common law jury in both civil and criminal cases. Civil cases may, however, be heard without a jury upon agreement of the parties. One judge constitutes a quorum except when the court is sitting in a capital felony, when there must be three judges on the bench. When the court is trying cases having to do with election fraud, two judges make a quorum. One judge, however, may open and adjourn any superior court sitting.

In addition to trial matters and the handling of appeals from lower courts, the superior court has within its cognizance varied operations of an administrative nature. It audits the accounts of the levy courts in the several counties. Levy courts, it should be noted, are county administrative commissions with the power to levy county taxes; they are not

judicial tribunals. The superior court, also, serves as a board of canvass to ascertain the elections of county and state officers. The judges have been given the power to appoint several administrative officials of some of the state agencies. Jury commissioners are named by the judges. The superior court handles the matter of eliminating grade crossings. Appeals from the State Tax Board are brought to it, and review of commitment to the Ferris School (an industrial training center for delinquent boys) is within its jurisdiction. Certain types of tax sales must be approved by the superior court. Cases involving pollution of streams are taken before it, and divorce is obtained only through this tribunal.

To handle the work of this court there are five judges, known as the law judges, all appointed by the governor for a term of twelve years, subject to confirmation by the Senate. The court consists of a president judge, one associate judge, and the three resident county judges. The clerk of the court is the prothonotary* of the county in which it sits.

The judges of the superior court, or a majority of them, may from time to time promulgate general rules concerning the procedure before this tribunal. The right of trial by jury as at common law shall be preserved, and any substantive right of any party may not be abridged, enlarged, or modified. The rules so adopted supersede all statutory provisions that are in conflict. Cases decided by the superior court are reported in the *Delaware Reports* and in the *Atlantic Reporter*.

The salary of the president judge is \$15,500 annually, and that of the associate judges is \$15,000. All necessary expenses connected with the sitting of the superior court in any county are paid, upon approval of the resident judge, by the county levy court.

Court of Common Pleas. Each of the three counties has a court of common pleas. These courts are, strictly speaking, county courts and, under the statute creating them, bear the name of county court. The common pleas court for New Castle County was the first such tribunal in Delaware. It was created in 1917 to relieve the congestion of cases particularly of a civil nature that occurred in the superior court. The common pleas court has been given jurisdiction to receive, hear, try, and dispose of cases, arguments, motions, and petitions that are assigned to it by the superior court for New Castle County, pursuant to the rules of that court. The creation of the common pleas in New Castle County was the result of the need for some intermediary tribunal between the justices' courts and the superior court to handle the backlog of civil cases arising from the increased litigation in the upper county.

The common pleas court for New Castle County has concurrent jurisdiction with the superior court over all civil matters arising *ex contractu*

* The prothonotary is charged with keeping a record of all civil judgments in the county.

(upon or from a contract) or *ex delicto* (of or by reason of a delict or wrong, such as a negligent act) where the value of the matter does not exceed \$1,000. In civil disputes one or both of the litigants may demand a jury, which when called shall not consist of more than five persons, a majority of whom may render a verdict. This court also has criminal jurisdiction over misdemeanors in rural New Castle County comparable to that exercised by the Municipal Court of the City of Wilmington, and concurrent with that of the justices of the peace. If an accused, brought before a justice of the peace for trial, wishes to have his case removed to the court of common pleas, he may do so. Criminal matters are tried without a jury, and all prosecutions are upon information. The two judges of this court must be learned in the law, have been practicing attorneys in good standing, and residents of New Castle County. Appointment is made by the governor, and the term is four years.

Almost two decades after the common pleas for New Castle County was established a similar tribunal was set up in Kent County. Again there was felt need for the creation of a competent court to relieve the burden of the superior court in the civil work load and to act concurrently with the justices' court in the handling of cases involving misdemeanors.

In 1953 the General Assembly established a common pleas for Sussex County. The jurisdiction of these courts is comparable to that of New Castle County. The common pleas courts as a general rule meet approximately twice a week. The downstate courts have much lighter dockets than does the New Castle County court. The judges are appointed in the same manner as the judges for the common pleas of New Castle and must have the general qualifications of the judges serving in that court.*

Clerks of the courts of common pleas are appointed by the respective judges. Writs of execution for seizure and sale of personal property, however, issue out of the prothonotary's office in the county. Judgments do not act as a lien upon real estate, but may be transferred to the office of the prothonotary and upon proper filing may become liens.

Appeals from decisions of the courts of common pleas rest with the superior court sitting in the respective counties. The statutes limit the right of appeal; for example, civil disputes involving less than \$200, that have been decided in the common pleas may not be appealed.

Specialized County Courts

In addition to the courts of general jurisdiction operating at county level there is a series of tribunals exercising special types of authority. Some of these are ordained by the constitution, some have been established by statute. The register's courts, and the orphans' courts have been designed

* There are two judges in New Castle County, one each in Kent and Sussex. The term of the judge in Kent is four years; in Sussex, it is twelve years.

by the constitution; the Family Court for New Castle County and the Juvenile Court for Kent and Sussex Counties are the result of legislative action.

The Register's Courts. The register of wills for each county, an elective officer, holds the register's court for his county. It is here that the probating of wills occurs. These courts may issue process throughout the State. Appeals from their decisions lie with the orphans' court, and in cases where the register of wills is in interest concerning the probate of a will, the orphans' court has original jurisdiction. Under the constitution, the General Assembly may divest the register's court of its jurisdiction, transferring that jurisdiction to the orphans' court. So far this has not been contemplated.

The Orphans' Court. The same judges who hold the superior court also make up the orphans' court. This court sits in each of the three counties. The administration of trusts established for the care and upbringing of orphans comes within its jurisdiction. Appeals from the orphans' court lie with the State supreme court.

The Family Court for New Castle County. In response to constant pressure from persons interested in the problem of juvenile delinquency and its relation to home and family situations, the General Assembly in 1945 finally established the Family Court for New Castle County. The family court is a domestic relations court having general jurisdiction over juvenile delinquency, certain crimes against children, parental responsibility, and support. It has no divorce jurisdiction. There are two judges in this court, both appointed by the governor for terms of twelve years subject to confirmation by the Senate. No more than one judge can come from the same political party. The judges sit separately. Probation officers and a scientifically trained investigative staff under a qualified director serve this tribunal. Although the court is a relative newcomer to the judicial field in Delaware, it already has the approbation of persons interested in solving the problems of domestic relations.

The clerk of the court and the director, supervisors, probation officers, and other employees of the court are named by the judges. Expenses of the court including the salaries of judges and employees are met by the State.

Appeals from this court lie with the superior court if the sentence exceeds one month or the fine imposed exceeds \$100. Appeals from custody orders also go to the superior court, and the attorney general may take an appeal from any support order that he deems insufficient. Fines and costs assessed and collected are paid to the state treasury. The work of this court is conducted in an informal manner, and hearings are held in private at the discretion of the judge.

Juvenile Court of Kent and Sussex Counties. The Juvenile Court of Kent and Sussex Counties has jurisdiction roughly comparable to that of

the family court for New Castle. The powers given it are not quite as inclusive as those bestowed on the family court in that it does not have as complete a jurisdiction over domestic relations as does the family court. The judge is appointed by the governor and serves for twelve years. There is no provision in the law that the judge be a lawyer. Oddly enough a deputy judge appointed to serve in his absence must be a member of the bar. The judge is restricted from engaging in any political activity.

The control over probation and the general direction of persons under the supervision of the court are not as extensive as those given the New Castle tribunal. One reason for this difference is that the work load of the lower counties' court is not as great as that in the northern half of the State; another reason is that at the time of the formation of the juvenile court the pattern followed in New Castle had not been definitely set. There was an amendment in 1951 that extended the jurisdiction of the juvenile court but it did not set up the administrative arrangements which had been initiated in the family court.

Although the salary of the juvenile court's judge is paid by the State, the costs of operating this court are met by the levy courts of Kent and Sussex Counties.

The Supreme Court

The highest court of appeals in Delaware is the State supreme court. It is composed of three justices, appointed by the governor for a term of twelve years, confirmed by the Senate. The present supreme court was established in 1951. Prior to that time the highest appellate bench consisted of those judges "left over" from litigation in the lower courts. The chancellor usually presided in the supreme court unless the appeal was in equity. The chief justice under the old constitutional provisions sat with his colleagues in original instance in the lower courts, thus he was often disqualified from sitting in appeal. In spite of the fact that the judges on the old supreme court were kept busy handling routine matters in the lower tribunals they were sometimes called upon to sit *in banc*, that is, collectively. When sitting *in banc* the court exercised original and final jurisdiction, as by custom no appeals could be taken from its decision.²

The thinking of the members of the constitutional convention of 1897 in respect of judicial arrangements was that appeals from lower courts would not usually take place. Provision was made to have two or three judges sit in superior, general sessions, oyer and terminer, and in the orphans' courts. The convention felt that by having a plural number of judges sit in first instance fair procedure and an equitable justice would be guaranteed without setting up an elaborate system of appeals. If a fundamental question of law did arise in any of the law courts in first instance, and the lower court certified the question to be heard by the court-in-banc, the case would be transferred.

Although some of the older members of the bar accepted the traditional system wherein an appeal was heard by all the state judges who had not sat in the case originally, there was a growing demand, first noticeable in the 1930's, for a separate supreme court. The fact that Delaware was the only state without a separate final appeals bench was a constant source of irritation to many attorneys and students of the law. It was an often repeated argument that the old "left over" court could not handle adequately the increasing corporate litigation; that a high bench concerned exclusively with the appellate function was vitally needed if corporations were to continue to use the State as their official home.

The argument was also advanced that by not having a separate supreme bench Delaware was denied the advantage of a high court that could set the legal tone of the state. There was no "appellate climate" in which the high judges could mediate upon the jurisprudential aspects of a case in appeal. Pressure from bar, business, and those interested in the philosophical approach to law culminated in the establishment of a separate supreme court in 1951.

In the few years since its creation this court has more than justified its existence. The number of appeals taken already is larger per annum than those that had been received by the old supreme court. The types of cases heard have reflected the wide range of litigation that tends to come to a high bench for final decision if that bench is free to consider the law involved from a completely fresh point of view. By having judges free to handle only appeals there has been developed an "appellate tone" capable of assuring the fullest consideration to the law upon which the appeal has been made. Already the body of appellate law reflects the well-rounded philosophical and historical approach to legal concepts, which is expected of a final appeals court.

Much of this success can be attributed to the three men who were first appointed to the supreme court. Each of these judges had a wide experience in corporation law, in equity, and in ordinary legal practice. Each of them knew in intimate detail the rich legal history of the State.

If for any reason a justice of the supreme court is disqualified to sit in an appeal, then the chief justice or next ranking associate justice shall appoint from among the other state judges one or more to sit temporarily in the supreme court to fill up that court to the number of three justices. Three is the quorum, but any one of the justices may open and adjourn court.³ Although the constitution does not require it, each member of the supreme court comes from a different county, thus assuring a sort of geographical balance. By law, not more than two of the justices shall come from the same political party, a stipulation reflecting the effect to insure bi-partisan representation in the judiciary.

The jurisdiction of the supreme court is both original and appellate.

Further it renders advisory opinions to the governor upon his request. Its appellate jurisdiction involves the issuance of writs of error and certiorari to the lower courts. Writs of prohibition, quo warranto, mandamus, and injunction also may issue from this court sitting in original jurisdiction. Questions of law may be certified to it by the lower state courts if there is an important and urgent reason for an immediate determination of such questions. By statute the court meets in Dover. It has been given the authority to establish its own rules in respect to its procedures and the length and time of its sessions.

Court of Chancery

Delaware is one of the few states of the Union which have a separate court of equity jurisdiction. In Delaware this tribunal is called the court of chancery. It is presided over by a chancellor, who is appointed by the governor for a term of twelve years, subject to confirmation by the state senate. The constitution permits the establishment of several vice-chancellorships by the General Assembly. At present there is only one vice-chancellor. Either the chancellor or vice-chancellor may hold the court of chancery. The rules of this court are made by the chancellor, and he supervises the distribution of its work. If the chancellor makes a request to the president judge of superior court for temporary service of one of the associate judges to act as vice-chancellor to hear and decide such causes as the chancellor may indicate prior to such designation, then an acting vice-chancellor may be appointed.

The chancellor has the power to appoint masters in chancery in any cause pending before the court of chancery.* The master is appointed *pro haec vice*. Appointments of trustees in matters of equity come within the purview of this court. It has the power to appoint receivers for insolvent corporations.⁴

Although the Family Court of New Castle County, the Juvenile Court of Kent and Sussex, and the superior court have certain authority over the issuing of support orders in domestic relations cases, the court of chancery has been upheld in assuming jurisdiction over a matter of support. The supreme court decided in the case of *DuPont v DuPont*⁵ that the family court did not have exclusive jurisdiction in such matters. It had been contended that the establishment of that court and the granting of power to it to deal with matters of support had deprived the court of chancery of jurisdiction in such cases. The supreme court pointed out that in order "for the legislature to prevent the chancellor from exercising a part of the general equity jurisdiction it must specifically express the intention to con-

* The master in chancery usually has the duty of executing conveyances, assignments, or other instruments, the execution of which has been ordered by the chancellor.

fer that particular part of equity jurisdiction upon some other tribunal exclusively and at the same time create in that tribunal remedies that would have been available in the court of chancery."

Resort could be had, therefore, by litigants involved in support cases requiring equitable remedies, to the court of chancery. From this it would seem that the jurisdiction of the chancery court is derived from the constitution and not completely subject to legislative action. If this is so, then equity stands in a much different position vis-a-vis the legislative power from that in which the common law finds itself.

The court of chancery is held in high esteem by members of the Bar. One reason for this esteem is the fact that outstanding men have held the chancellorship. Chancellors Wolcott, Harrington, and the incumbent, Seitz, have added much lustre to the chancery bench. Their decisions have been heralded throughout the equity jurisdiction of the entire country. All have been men of great personal stature commanding the respect of lawyer and layman alike. With the tremendous legal business deriving from the presence of thousands of corporations in the State, and with much of the corporate litigation involving equity, the need for competency in chancery is obvious. Delaware has been fortunate in having chancellors of such high calibre.

Judicial Council

In 1955, after strenuous effort had been made by several of the State's jurists to bring some administrative direction to the judicial system, the General Assembly created a judicial council. The council consists of fifteen members, ten of whom are ex officio, including the chief justice, the chancellor, the president judge of the superior court, four members of the General Assembly, the attorney general, the president of the state bar association, and the president of the state university. The other five members are named by the governor and may not be lawyers. The duties of the council are: (1) to make continuous study of the administration of justice in the State and of the organization of the judicial system; (2) to investigate criticisms of the administration of justice; (3) to collect data concerning work loads of the several state courts; and (4) to make recommendations to the governor and the legislature respecting changes in the administration of the court system.

Although the establishment of the Judicial Council was long needed in Delaware, some administrative surveillance over the actual work of the courts still needs to be set up. It would seem that the supreme court, or an office under its supervision, would be the most likely place in which to locate this surveillance.

JUDICIAL PERSONNEL

Apart from the arrangement of the courts, which in Delaware has been quite unique because of the impingement of the county-based statutory courts upon the constitutionally created state-judge system, there are several problems affecting judicial personnel that bear discussion. These problems concern the selection of judges, their qualifications, tenure, compensation, retirement and removal. Delaware judiciary has been enviably free from scandal and from the politicking which occasionally haunt many of the state courts whose judges are elective. Probity and integrity have been the bench marks of the Delaware judiciary. Much of the salutary atmosphere in which the State's judicial organization operates can be traced to the method of selection of judges employed in the First State.

Selection of Judges

Judges are appointed in Delaware. With two exceptions the appointments are made by the governor with the consent of the Senate.* Justices of the peace as well as the members of the supreme court are named in this manner. Election of judges has never been seriously contemplated in Delaware, except in the abortive constitutional revision of 1853 which failed of acceptance.

Two factors loom large in the selection: first, countyism, and second, bi-partisanism. Although the judges of the constitutional courts are state judges the basic law provides that three of them shall be resident judges in the three counties. By custom, it would appear, the three justices of the supreme court will continue to be named one from each county. Fair attempt is made to distribute the remaining judges among the counties equally. The constitution requires that whenever the total number of the three justices of the supreme court, the five judges of superior and orphans' courts, the chancellor and all vice-chancellors is an even number, not more than one half of the total members of these courts shall be of the same political party. When the number is odd, then not more than a bare majority shall be of the same major political party with the remaining number all of the other major political party.⁶ One of the reasons the separate supreme court, established in 1951, was so long coming to Delaware was the fear of the minority party that the party in power would name all the members to the high bench. Because a constitutional amendment was needed to create the court, the minority always had enough votes to prevent its passage.

One facet of judicial selection in Delaware needs remedying; there is no legal provision compelling the governor to make public his nomination

* The judge of the municipal court is not confirmed by the Senate. Also, the deputy judge of this court is named by the resident judge of the superior court.

before presenting that nomination to the Senate. The governor, of course, can make it his practice to bring his nominees to the public's attention, but he is not presently compelled to do so.

Qualifications of Judges

Oddly enough there are no formal qualifications for the state judges except that they must be learned in the law and that the members of the constitutional courts must profess belonging to one or the other of the two major political parties. The statutes say nothing concerning their appointment, and in fact may make no requirement other than those broadly stated in or inferred from the constitution.⁷

The General Assembly has stated several qualifications, for the judges manning the courts established by the legislature. Judges of the common pleas courts must be practising attorneys in good standing in their counties before appointment. Judges in the family court must have been lawyers. Some of the judges are not permitted to practice law after being named to the bench, others, as in the cases of the municipal court judge and the common pleas court jurists, may. Judges in the Juvenile Court of Kent and Sussex Counties may not work in or with political parties after appointment.

Informally, however, all the judges, both state and statutory, are subject to definite scrutiny before appointment, and no man may be named to the state bench without having the approval of the Delaware Bar Association. Not only must the appointee have the approbation of his guild, but governors are loath to name someone who is not well known in the legal profession. Once appointed, a state judge by custom must sever his connections with the practice of law. The fact that the judges are taken from leading law firms tends to make the acceptance of a judgeship an extreme sacrifice. It is remarkable that in view of this fact the state judiciary has been staffed by able men. Apparently there is a spirit of *noblesse oblige* that not only makes a man accept appointment but keeps him on the bench for extended periods of service.

Tenure

The state judges and most of the statutory judges serving in the inferior courts serve for a term of twelve years.* In one respect it is the length of term which has gained good men for the courts. In state courts the incumbent has no need for politics inasmuch as the term is sufficiently long to develop a judicial philosophy without fear of having one's work interrupted by the need for re-appointment.

The average length of service for the state judges between 1910 and 1950 was seventeen years. One judge served for thirty-three years, two for

* The common pleas judges in Kent and New Castle are appointed for four years.

twenty-eight years, and one for twenty-four years during this period. Five of the twenty-five judges who served in these years were reappointed.⁸

Although it is a bit too early to make any general statement regarding the establishment of a sense of career among the judges in the inferior tribunals, such as common pleas, family court, and juvenile court, there is some indication that the tendency is to develop something approximating the tenure of the state judges. These courts do not, of course, have the prestige of the higher tribunals, but the recent improvements in salary, conditions of work, and increased term have made them considerably more attractive than they were previously. It would appear that the lower courts are now being manned by able public servants.

The justice of the peace courts present a somewhat less admirable picture from that depicted in the upper forums. Here the appointments are for four years and they are purely political plums. In naming individuals to these courts the governors take the recommendations of the local party leaders. Accordingly, some very poor appointments have been made. Some of the magistrates and justices give little evidence of a keen perception of their role in the administration of law. Others have proven quite competent, sincere, and extremely conscious of the importance of these lower tribunals to the handling of litigation. As noted earlier, there is room for much improvement in this area of judicial organization, and unless serious effort is made toward reform these courts may find themselves abolished.

Compensation

Within recent years the salaries of the state judges have been increased considerably. In 1945 the law judges received \$10,000 annually with the chief justice being paid \$10,500. The chancellor received the same amount. Today the chief justice of the supreme court receives \$17,500, the associate justices, \$17,000 annually. The chancellor is paid \$15,500 and the vice-chancellor \$15,000 as are the associate judges of the state courts. The president judge's salary is \$15,500. Although these rewards are much better than those of ten years previously, the acceptance of a judgeship is a sacrifice for most men named to the state bench.

The salaries of the statutory judges are not uniform. Common pleas judges are not paid equally. The jurists in New Castle and Kent receive \$5,000 yearly; the judge in Sussex, \$10,000. Family court judges are paid \$10,000 annually, and the judge of juvenile court in Kent and Sussex receives \$10,000. Municipal Court pays \$7,500. The judge of juvenile court and the judges of common pleas in Kent and Sussex Counties are paid from funds in the state treasury.

There are no stipendiary magistrates in Delaware. The justices of the peace obtain only fees and costs. Some of the magistrates, because of the

collection systems, which they operate in conjunction with their offices, make quite a good income. One of the serious drawbacks to the improvement of the efficiency of the minor judiciary is the absence of a stated salary.

Retirement and Removal

Constitutional and statutory judges can be removed by conviction in the state senate upon impeachment in the House. In both chambers the action taken requires a two-thirds vote of all the members elected to each house. Under the constitution the governor may remove any public officer convicted in a regular court of any infamous crime. No high state judges have ever been removed from office in Delaware. The governor can, of course, bring informal pressure to bear upon a justice of the peace to resign if he becomes involved in circumstances rendering him *persona non grata* in the eyes of the public. Several magistrates have been forced out of office by this means over the course of the past quarter century.

Until 1955 no provision was made for pensioning the state judges. Several members of the Delaware bench in the past have served for more than thirty years, yet no compensation was forthcoming to the judges upon their retirement from public life. In fact, several judges refused reappointment for the reason that they had to resume the private practice of law in order to provide for their old age. This lack of a pension system tended to keep a man in his sixties away from the bench at the very time when his experience would undoubtedly have been of great benefit to the State.

In 1955 the legislature finally enacted a retirement pension law making it possible for a judge to leave the bench upon completion of twelve years' service. During his term of office he contributes between five and seven per cent of his salary to a state judiciary retirement fund, which is administered by a Board of State Judiciary Pension Trustees consisting of the chief justice, the secretary of state, and the president of the Farmers' Bank of Delaware. The length of service of a judge determines the amount he will receive monthly upon his retirement. The pension continues during his lifetime.⁹

PROBLEMS OF JUDICIAL PROCEDURE

Before concluding the discussion of the judiciary it is necessary to look at certain aspects of the judicial process that often go unnoticed at the state level. Judicial review—or the power of the courts to declare legislative, executive, and administrative acts unconstitutional—the granting of advisory opinions, the issuing of declaratory judgments, the functioning of the jury system, and the role played by the bar in the work of the bench are facets of the judicial operation that are of great importance to an understanding of the judicial process.

Judicial Review

The problem of judicial review has not been pressing in Delaware. Between 1900 and 1950, in only twelve cases coming before the supreme court were the acts of legislature questioned as to their constitutionality. Seven times since 1900 have enactments been negated. Much more frequently the decisions of the several administrative agencies have been taken to task, although in these matters the cases are dealt with finally, in most instances, by the superior court, and appeals to the high bench have not been common.

Interpretation of statutes as distinguished from determination of their constitutionality has frequently been before the court. With the increase in legislation of a technical nature arising from the development of public control in the areas of employment, commerce, and public utilities, the judiciary has been required to give more attention to the meaning of the legislation passed by the General Assembly.¹⁰

Although many of these cases could have been reviewed by the courts, the Delaware judiciary has not frequently invoked the subtle doctrine of substantive due process. While the constitution contains a provision that no man shall be deprived of liberty or property except by "the law of the land," this clause has not been generally used as a means of substituting the predilections of the judges for the decisions of the General Assembly. The courts of Delaware have not considered themselves to be super-legislatures; rather they bend every effort to follow the will of the General Assembly unless that body runs counter to the obvious intent of the constitution.¹¹

Advisory Opinions

Delaware is one of the few states that permits advisory opinions of its judges to be furnished to the governor. Under statute the chief executive may call upon the supreme court to advise him in the discharge of the duties of his office.¹² The justices are required to render their advice in writing, touching upon the proper construction of any provision in the constitution of the State or the Federal Constitution, or the constitutionality of any law enacted by the legislature. Several governors have availed themselves of this provision.

Declaratory Judgments

Declaratory judgments have been permitted in Delaware since 1947.¹³ Judgments of this kind define disputed rights before the issue actually gets to the point of litigation. Declaratory judgments extend to cases in actual controversy (except in respect to divorce or annulment of marriage) before the superior court, the supreme court, the court of chancery and the orphans' court. The courts named may declare the rights and other legal

relations of any interested party petitioning for such declaration. Such declaration has the force and effect of a final judgment or decree and is reviewable as such.

When a proceeding under this act involves determination of an issue of fact, the issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions either with or without a jury. However, juries are not used as a rule in cases involving declaratory judgments.

The Jury System

The jury system in Delaware follows the common law pattern except in respect of the numbers on the grand jury and numbers hearing cases in some of the legislative courts. Fifteen persons serve on the grand jury in New Castle County, and ten on the juries in Kent and Sussex. In each jury there must be a member from each of the representative districts in the county. The grand jury serves for one year. The panel from which the grand jury in each county is chosen numbers fifty. The panel is drawn, as in the case of the petit or trial jury panel, by jury commissioners* who are appointed by the law judges of the State. The commissioners must be of opposite political parties. Grand juries in New Castle County can return a true bill with the concurrence of nine members; seven are required in Kent and Sussex.

The petit or trial juries in Kent and Sussex are chosen from panels numbering thirty-six persons in each county, and in New Castle from panels numbering forty persons. The sheriffs of the several counties summon the prospective jurors from their counties. Twelve jurors serve on the petit juries in the state courts. In both criminal and civil cases the verdict of the jury must be unanimous or the trial must be commenced again.

In certain terms of superior court no civil cases may be tried with juries without the consent of both parties. In cases tried without jury matters of fact may be determined by the court and judgment rendered upon their decision as upon a verdict by a jury. In all civil causes where matters of fact are at issue, if the parties agree, such matters shall be tried by the court and judgment rendered as in cases tried by a jury.¹⁴ Thus the statutes have attempted to discourage the use of the jury in civil cases.

As is usual at state level, many persons are automatically exempt from jury duty because of their occupations. The only qualifications for jury service is the ability to vote in a general election.

Many crimes may be prosecuted in Delaware upon information rendered by the attorney general. In recent years less and less work is being given the grand juries in the matter of routine criminal matters. The grand jury is coming to be used more and more in the investigation of conditions in the several health and welfare institutions, in the maintenance

* Two commissioners serve in each county.

of sanitary conditions, especially in the outlying rural areas of the State, and the investigation of crimes such as commercialized gambling, white slavery, and racketeering. Special grand juries convened for the investigation of a specific problem or condition are not generally used in Delaware.

Bench and Bar

Perhaps there is no state in the Union in which there is a greater affinity between members of the bar and the bench than in Delaware. The inter-relationship between bench and bar can be seen most acutely in the process of appointment to the judiciary. Appointment invariably bears the approval of the Delaware Bar Association.

Because the State judiciary is appointed rather than elected it has been kept on a relatively high level. No governor would risk proposing a man of mediocre attainment for judicial office. If he did, the bar would openly oppose the nomination. The majority of the judges have been members of the older law firms in the State, and these firms are held in high esteem by both the general public and politicians. Coming from the elite of the legal fraternity, the judiciary is afforded a respectability not often found in state judicial systems.

NOTES

¹ Title 10, sec. 9101.

² See *Ownbey v Morgan's Executors*, 30 Del. 317.

³ Art. IV, sec. 12. The governor may commission judges *ad litem* under certain conditions. Art. IV, sec. 15.

⁴ *Revised Code of Delaware* (1953), Title 8, sec. 291. The superior court also has jurisdiction over some aspects of insolvency. *Revised Code of Delaware* (1953), Title 10, sec. 7301.

⁵ 46 Del. 592 (1952).

⁶ Art. IV, sec. 3.

⁷ See Constitution of Delaware (1897), art IV.

⁸ Paul Dolan, "The Supreme Court of Delaware, 1900-1950," *Dickinson Law Review*, LVI (January, 1952), 166.

⁹ 50 *Delaware Laws* 119 (1955).

¹⁰ See *Delaware Racing Association v Wise*, 41 Del. 587.

¹¹ *Collison v State*, 39 Del. 460, 484. Also *State v Hobson*, decided October 18, 1951.

¹² *Revised Code of Delaware* (1953), Title 10, sec. 141.

¹³ 46 *Delaware Laws* 269 (1947).

¹⁴ *Revised Code of Delaware* (1953), Title 10, sec. 502.



CHAPTER 12

Law Enforcement

UNTIL QUITE RECENTLY, law enforcement did not present serious problems in Delaware. The tight-knit, compactness of the small State that existed during the past century kept criminality relatively low. It was only in the matter of political corruption that Delaware exhibited a criminal trend. Vote fraud was prevalent during a considerable portion of the late nineteenth century, and it was practiced by both major parties unashamedly. This situation finally led to the placing in the constitution a provision that election offenses would be tried without a jury and upon information, not grand jury indictment. Both grand and petit juries were eliminated in the prosecution of electoral offenses because it was felt that indictment and conviction were almost impossible if the usual popular method of jury trial was used.¹

With the rise of a complex society, especially in the northern section of the State, the relative freedom from crime that Delaware enjoyed began to disappear. Criminal behavior gradually became more prevalent; a situation that has become a great concern to all thinking citizens. Particularly during the past ten years, the rise in the crime rate has been great. For example, the larceny rate was 1,236.9 crimes per 100,000 of the population in 1945, whereas it was only 889.9 per 100,000 in the entire United States. Auto theft in the same year was at the rate of 244.3 per 100,000 persons in Delaware and 241.5 per 100,000 persons the nation over.² There was some decrease in these categories in 1950. The rate of theft, however, was 213.9 per 100,000 persons for Delaware and 153.4 for the Nation.³ Although there has been a slight decrease in crime against property, the homicide rate has crept upward. In 1945 it was 4.81 per 100,000 persons for Delaware, whereas the national average was 5.49. In 1950 homicides went to 5.18 per 100,000 persons in the State and to 5.11 for

the country as a whole. This situation has become a matter for serious thought on the part of the police because it indicates a trend toward increasing acts of violence. Diverse social groups thrown into close contact in the metropolitan areas of the State apparently provide an opportunity for an increase in this type of crime. Whatever the causes, Delaware enforcement officers are beginning to worry about assaults and cases of aggravated battery. Rumbblings can be heard urging greater use of the lash.⁴ Juvenile delinquency is on the increase throughout the State, and youthful gangs bent on crime have begun to roam the outlying areas and some of the smaller towns in New Castle County. Part of this situation may be the result of general disturbance among the youth brought on by insecure times, but it also may be due in part to the increase in the number of large industries that have come into the smaller localities. With these industries have come social elements of heterogeneous nature that have caused dislocation in the manner of life.⁵

Delaware is beginning to feel the growing pains associated with the rise of a complex social pattern. The passing of the compact, tight-knit homogeneity of the people is bringing with it an increase in lawbreaking. More direct action calling for greater police and crime prevention facilities is in order. Generally, programs of this nature require an increase in public expenditure. Whether the average Delawarean is willing to face up to this need remains to be seen.

STATE LAW ENFORCEMENT AGENCIES

Two state officials are charged by the constitution with the enforcement of law—the governor and the attorney general. Both are elective, constitutional officers. In addition, the statutes have provided for a State Police force and certain miscellaneous enforcement agents such as game and fish wardens, oyster wardens, and fire marshals.

The Governor

The formal organizational pattern of law enforcement in Delaware has at its apex the governor. He is charged by the constitution with the faithful execution of the laws. He is commander-in-chief of the organized state militia, and as such may use them to enforce law and order. Although the governor is directed to execute the law, he is given little express power to accomplish this mission. The State Police are not subject to his direction, and the attorney general is an elective, constitutional officer completely independent of the chief executive.

The Attorney General

The State's chief law officer, the attorney general, is responsible to the electorate. His term of office is four years, and he receives a salary of

\$10,000, annually. The governor may request opinions from this officer, who may give them as a matter of courtesy, but there is no constitutional requirement to this effect. The statutes make little mention of the relationship between governor and attorney general. In the matter of requisition of fugitives, the governor may require the attorney general to make investigations and to report to him.

By custom, the governor and other executives have called upon the chief law officer for opinions as to the law and for advice. In the great majority of cases, this has been freely and willingly given. The attorney general usually does not render opinions to any person other than those in administrative state office. Yet he undertakes to interpret statutes and rulings of the courts upon the request of local authorities. Within recent years an increasing number of requests have come to this official from executive directors of state agencies and from state commissions. The growth in administrative law has necessitated a constant search for the legal boundaries within which the administrative groups have the power to operate. In many of these instances the attorney general has had matters referred to him that involve not only the interpretation of law but also questions relating generally to the law of officers. At times, however, the attorney general has been so delayed in making a report or in giving his opinion that administrative action has had to be taken, in spite of the danger of acting without legal opinion. One of the prevailing difficulties with respect to the granting of opinions by the attorney general is that no public record is kept of them so that ready reference is denied an interested officer. It has been suggested that the attorney general's office take steps to collect these opinions and to make them a matter of public record as in the case of law reports.

Prosecutions in the great majority of cases lie within the purview of the attorney general. He may decide whether or not to bring a matter before a grand jury for possible indictment, and he can decide whether to lay an information against someone. In certain cases, the statutes provide that he must act upon the request of administrative officer to institute proceedings against a person or corporation.⁶ He serves as counsel for the State Board of Education.

Criminal prosecutions in Delaware, except for cases brought before a justice of the peace or the Municipal Court of Wilmington (the attorney general may bring cases in the latter court if he wishes), are brought by the attorney general's office. He has a chief deputy and one deputy in each county (all of whom he appoints) to aid him in handling criminal trials. There is also a deputy attorney general for the State Tax Department. This official, likewise, is appointed by the attorney general. His chief duty is to interpret the revenue laws for the tax officials.

There is no county prosecutor in Delaware. The chief law officer is empowered to prevent county coroners from making investigations that he

believes can be more effectively or more economically conducted by his office. He may at any stage of a coroner's investigation intervene and assume control of a case. Assisting the attorney general in ferreting out crimes and bringing the persons responsible therefor to justice are three state detectives, one for each county. These officers are appointed by the attorney general for a term of four years, and they may be removed by him.

Criminal trials that are held in superior court are usually prosecuted by the attorney general himself, if the case is one involving a capital offense or if the issue is an important one. Otherwise, his deputies present the state's case. In the Municipal Court in Wilmington, cases are handled for the city by the assistant city solicitors. The attorney general may intervene if he wishes, but he is hardly ever seen in municipal court. He commissions the city solicitor to act for the State in these instances.

THE POLICE SYSTEM

The police system in Delaware is divided into four parts. First, there is the State Police; second, miscellaneous state officers such as game and oyster wardens, fire marshals, and a few special constables; third, the county police, including sheriffs, their deputies, and certain constables; and fourth, the municipal police forces as found in Wilmington and in a few of the larger towns.

The State Police

The Delaware State Police consists, by statute, of 180 officers and men. Originally, the State Police served only as traffic patrolmen with power to enforce the laws relating to weight, speed, and operation of vehicles on the public highways of the State. Since 1931 they have constituted a full-fledged state constabulary.⁷

The State Police is under the direct command of a superintendent, who is appointed by and responsible to the State Highway Commission. Although the administration of the State Police rests with the commission, the legislature has on occasion interfered with the internal operation of the force by effecting the removal of the superintendent and lesser officers. In one such action, a superintendent, who had the approval of a majority of the members of the highway commission, was forced to resign. There was much discussion in the public press at the time as to whether such action constituted a bill of attainder and also as to whether the legislature actually had the power to remove. The chairman of the commission settled the controversy by stating that the highway commission was a "duly constituted executive body of the legislature and subject to its direction." Under this ruling the superintendent was dismissed.⁸

The State Police has recently been reorganized in order to permit it to

serve as a mobile police unit. In spite of this reorganization the force is too small to give adequate police coverage to the State. Increased highway traffic, the growth of rural areas, and the general increase in the number of laws involving police prosecution have rendered the task of present State Police force insuperable. Many of the rural areas depend almost entirely upon this organization for protection. In addition to regular police work, the men are called upon to serve in many official ceremonies, to guard the governor, and to act as messengers for various state officials. By and large, the force has been able to attract capable men in spite of long duty and inadequate pay. There is an *esprit de corps* among the troopers, and the force is held in high esteem by the general public. For greater use to be made of the potentialities of the state police, greater appropriations are in order.

Miscellaneous Officers

Aside from the State Police, the county enforcement agencies, and the local police authorities, Delaware enlists the help of a battery of miscellaneous security officials such as game and oyster wardens, fisheries investigators, and fire marshals. The chief game and fish warden and his assistants are specifically empowered to make arrests of those persons breaching the regulations regarding the taking of game or fish. The statutes also create oyster wardens for the Broadkill and Mispillion Rivers. The collector of oyster revenue appoints a captain of a watch boat to enforce the regulations issued by the collector. The captain has the power to make an arrest. All sheriffs, deputy sheriffs, constables, and state and local policemen are *ex officio* game wardens.

With the increase in multi-unit dwellings, especially in the rural areas of New Castle County, and in view of the many new and diversified industries coming into the state during the past ten years, legislators in 1953 created the office of state fire marshal. His duties are mostly investigative. Each organized volunteer fire company in the state is authorized to appoint three fire-policemen who have the duties to protect the contents of a burning building, establish and maintain fire lines, and to investigate the causes of all fires unless the investigation is made by other properly constituted officials.

LOCAL LAW ENFORCEMENT AGENCIES

As in most states the enforcement of the law in Delaware occurs at both local and state levels. The majority of the arrests in the State, however, are made by the local police officials, yet there is a tendency to use the State Police in the apprehension of criminals especially where a felony is involved. Wilmington police, however, still account for the bulk of the arrests made in the State.

The County Officers

County officers of the law have been the traditional guardians of the peace in Delaware. Until recent times, the county was the basic unit of law enforcement throughout the State. The sheriff and the constable were the mainstays of the local system of enforcement. In the late 1940's the legislature created the New Castle County Police to aid the county officials in protecting life and property particularly on the highways and roads in the northern section of the State. With the increase in urbanization several of the larger towns have developed their local forces so that today the town police are an important factor in law enforcement throughout the State.

The Sheriff. During the nineteenth century the sheriff was the time-honored officer forming the keystone of law enforcement at county level. Today he has become more an officer of the court engaged in serving writs and other processes issuing from the county tribunals. The sheriff is the executive of the county although the administration of county affairs is in the hands of the levy court. The sheriff is a constitutional officer, elected by the people of the county for a term of two years. He may not succeed himself in office.⁹ The job carries a low salary, but the fee system makes it a political plum. In case a vacancy occurs in the office the governor makes an interim appointment. In addition to his varied duties in respect to civil executions, the sheriff serves in multifarious capacities. He administers oaths; acts as the treasurer of moneys brought in his office as a result of performance of duty; he notifies the judges of the persons in his charge accused of capital crime or with manslaughter; keeps lists of prisoners in his care; and acts as game warden.

If a sheriff cannot perform his duties, the coroner of the county acts in his stead. The sheriffs of all the counties summon jurors and witnesses, and they are under compulsion to carry out the regulatory orders of the State Board of Health. They account for moneys received by them to the state treasurer or to the levy court of their respective counties, depending upon the source of the money. Civil process may be issued to a sheriff by a justice of the peace, but the general practice is for matters of this nature to be handled by a constable.

The office of sheriff is usually filled by a party politician who has received the approbation of the party hierarchy within his county. Usually the candidate is a member of this hierarchy, and is often one of the more powerful politicians. The filing fee for this office runs between \$750 and \$1,000, a fact that attests to the financial possibilities of the office.

The average sheriff is not a competent police officer. He has little training (although there have been notable exceptions) in either the art or science of police work. He of course has access to the *posse comitatus* (a group of citizens commandeered by the sheriff to aid him in apprehending

criminals) in the event that a general breach of the laws occurs, but usually he and his deputies (whom he appoints) are concerned with the routine work of civil process emanating from the courts.

The office of sheriff in Delaware has its origin in the history of the early settlements. At that time it was perhaps the central administrative post in the community, but since then the position has continued to diminish in importance until now it is largely a means of rewarding party faithfuls. There is little need to retain the office of sheriff. Its duties, which are now mostly in the field of civil jurisdiction, could be handled by court appointed officials.

The Coroner. Another office of law enforcement in Delaware that has carried down from the early days of the State is that of coroner. The State constitution provides that there shall be one coroner in each of the three counties, and that he is to be elected for a term of two years by the people of the county. He is commissioned by the governor. Coroners may employ deputies under a provision of statute. The chief duty of the coroner has been to investigate any death of a suspicious or unusual nature and following that investigation to hold an inquest. To aid him in the holding of any inquest upon cause of death the coroner calls a jury of seven men. Examination of witnesses at an inquest is conducted by the coroner, although generally his knowledge of law is meager. The coroner has the right to arrest after an inquest and to commit for action by the grand jury. In order to perform his investigatory duties intelligently the coroner should have medical knowledge, but, until 1955, no coroner in Delaware was required to have a physician aid him in his work. The 118th General Assembly, in 1955, created the office of state medical examiner, who is charged with the duty of investigating all deaths of a suspicious nature. This officer will work directly with the attorney general and the state police. Although the major duty of the coroner has been transferred to another office the coroner's office has not been abolished. The new law is not clear concerning the continuing duties of the coroner. It appears, however, that he shall hold inquests and make his findings available to the proper authorities.

Rural Police

In New Castle County there is a rural police force known as the New Castle County Police. It numbers about forty men. These officers of this force patrol the rural roads of the county. At present the New Castle County Police are under the rather broad supervision of the levy court. Unfortunately from the standpoint of command and direction there is no provision for a supervisor who has charge of the routine operations of the corps.

Constables

The regular county constables are named by the levy courts, but the governor is authorized by statute to appoint constables for New Castle and Sussex Counties to serve in addition to those named by the levy courts of these counties. The governor may, from time to time, appoint special constables for various institutions.* State constables are named by the governor. County constables, who serve for two years, must reside in the hundred or district from which they are appointed. Both the commissioned constable in a county and the special appointee are peace officers and may make arrests in cases of breach of the law done in their presence or within their cognizance. They may call upon the people to aid them in the pursuit of their duty.

Constables are usually attached to a justice of the peace court. They serve the summons issued by this court and handle the execution of its civil writs. Fines are paid to the constable by misdemeanants before a justice's court and are returned by him to the state treasurer. The constable receives a fee which is included in the costs of a case. Two constables are selected in each county by the levy court to act as its bailiffs. Several of the constables in Kent and Sussex Counties have the right to appoint deputies. In addition to their other duties, the constables, like the sheriffs, are under compulsion to enforce the rules of the State Board of Health. The constables also enforce the rules of the local health authorities. In the rural counties, laws having to do with the handling of stray cattle are executed by constables. The county receivers of taxes, county treasurers, and tax collectors use the constables as enforcement agents.¹⁰ Constables are enjoined to arrest tramps and vagrants upon sight.

The office of constable is an anachronism. Process serving could be done by special officials working under a magistrate. Arrests in criminal matters could be handled by an augmented state police force working in close coordination with local authorities in the towns and counties. The local constable cannot devote full time to his job, and the temptation to augment his earnings by working as a private bill collector is very great. Delaware seems to be the proper size both in area and population for the introduction of a highly integrated police system that would eliminate the vestiges of an outworn era, which the office of constable represents.

Municipal Police

Although several of the larger towns have been steadily augmenting their police forces, the City of Wilmington is presently the only municipality in Delaware that can boast of a fairly efficient police organization. The

* For the State Hospital, the juvenile homes, the railroad operating in the State, and for certain individuals, firms, or corporations doing business in the State. *Revised Code of Delaware* (1953), Title 10, sec. 2701.

personnel of that organization is recruited on a competitive basis, and the supervision is excellent. The pay of the patrolmen is not high, and there is often argument between their representatives and the directors of public safety over such mundane questions as rate of pay, length of working day, and promotion. At times the morale of the force has been lowered by bickering among the three directors of public safety, who are in charge of the city police and fire departments.¹¹

The city police are under the direct supervision of a chief, who in turn is responsible to the superintendent of public safety which official is appointed by the directors of the Department of Public Safety. The directors are appointed by the mayor, subject to confirmation by the city council.

Wilmington is still small enough in area and population to afford the complete administration of its police from a central headquarters. Centralization has helped in keeping down supervisory overhead, but at the same time the growth in the need for public safety has tended to overload the facilities.

At present there are approximately 250 employees in the city police system, including some thirty civilians. The internal administrative arrangements consist of the following divisions: detective, maintenance, personnel, records, traffic, and uniform.

In addition to the city police, there are a score of park police charged with the protection of the municipal parks. These officers are under the direction of the city board of park commissioners. There is little liaison between the city and park police organizations.

Most of the incorporated towns and cities in Delaware have their own police force, consisting usually of a chief and several officers. Most of these men are not trained policemen, and appointments are based usually on expediency rather than merit. The local chiefs of police work to some degree with the State Police, using the bureau of identification of that organization and the Federal Bureau of Investigation to gain information concerning suspects picked up for investigation. Most of the local chiefs belong to the Police Chiefs' Association and attend training courses under its auspices. Improvement in local police personnel would be achieved if town councils would give more attention to adequate pay scales, reasonable work load, and realistic pension plans. An economy-minded approach to public occupations can be clearly seen in the realm of municipal government. However, Dover and Newark, both faced with a rapidly growing population and extension of territory, have already taken some steps to improve their police systems.

CORRECTIONS

Until 1955 the organization of correctional facilities in Delaware reflected the prevailing local approach to the handling of criminals. Al-

though many states had long viewed correctional work as part of the State's responsibility, Delaware had kept to the time-worn theory that punishment was to be administered by local or county authorities.

Probably the chief reason for this lack of effort is that until recent times there has been little need for a first-rate correctional organization. Delaware, a small community possessed of the traditional aspects of a homogeneous, close-knit, rural entity, had no crime of significance. Social order was easy to maintain in such a situation. Accordingly, officials were not pressed to develop an elaborate or systematic arrangement for the handling of law-breakers or for the protection of society against the malefactor. Within the past twenty-five years the conditions of society have changed, and today Delaware is faced with the serious task of overhauling and revamping outworn methods and institutions in order to deal with a mounting crime rate and the problems of law enforcement in a growing and complex economy.¹²

Penal and Correctional Institutions

With social change there has arisen the need for bringing the problems of correction under a comprehensive state-wide system. Penologists and public-spirited citizens had long advocated the elimination of the county jail as the sole means of incarceration for convicted felons. Strenuous effort was made to have political leaders of both parties re-think the problem of correction and revise their attitudes toward correction. In 1955 the General Assembly finally enacted a state correctional system, effective July, 1956, to be administered by a seven-membered Board of Corrections, appointed by the governor for terms of five years. The board is to have exclusive jurisdiction over the care, custody, and supervision of all prisoners, prison labor, and all prisons, farms, workhouses, and jails to which prisoners are committed. The industrial schools for juveniles do not come under the authority of the board. The board will administer its duties through a director appointed by it. He will be responsible, under the pleasure of the board, for the care, administration, regulation, and control of the State prisons and prison farms and any other facility placed by law under the authority of the board. The central institution under the new board will be the present New Castle County Workhouse, which is basically a county jail but has been long used as a maximum security institution for the keeping of long-term prisoners admitted from Kent and New Castle Counties.* Delaware has never had a state penitentiary; the county jails have been operated and maintained by the counties.

County Jails

The New Castle County Workhouse is located at Greenbank, a few miles

* Long-term as well as short-term prisoners in Sussex County are kept in the Sussex County jail.

to the southwest of Wilmington. The workhouse is a rather ramshackle affair consisting of a series of turn-of-the-century brick buildings, some of them several stories in height. The entire lay-out is surrounded by a wall, enclosing an exercise yard, and a high fence. Spirals of barbed wire are attached to the top of the fence and wall, making a rather formidable obstacle to any one essaying escape. In the corners of the enclosure are guard towers, manned by armed officers. From the vantage points of the towers flood-lights are directed on prison and yard during the night. The prison is supplied with much of its food from the nearby prison farm where trusties are employed. Women prisoners are kept in a separate building that is outside the main enclosure of the workhouse, but which itself is surrounded by a wire fence. The security measures employed in the main jail are not used in the woman's jail. The women live in regular rooms, two or more assigned to each, whereas the men are confined in cells.

The workhouse is under the direct supervision of a warden, who is appointed by the Board of Trustees of the New Castle County Workhouse, which board in turn is appointed by the resident judges of New Castle County. The New Castle County Workhouse is by far the best managed of the three county jails. However, it is anything but a model prison. Equipped to house approximately 300 inmates, it has held as many as 450 prisoners. The major shortcoming in its management has been the inadequacy of its classification system coupled with the lack of facilities for the treatment of various types of prisoners.

The workhouse has been the scene of hangings in New Castle County and of the application of the lash. The pillory was abandoned in Delaware, in 1907, but the whip is still used. Within recent years, however, very few persons have received this form of punishment.

The county jails in Kent and Sussex are not of the latest construction. In Kent, the lock-up consists of a few individual cells and a general detention pen. There is no classification in these prisons other than the separation of the sexes. Prisoners are permitted to leave the jail on work orders, and complaints have been lodged concerning the presence of the inmates in the streets of the county seat, Dover, which is also the state capital.¹³ The jail in Sussex is newer and has a large farm attached to it. However, the conditions there have been subject to severe criticism on the part of many civic-minded persons. At times the administration of the Sussex jail has been made a political football.

Both Kent and Sussex jails are supervised by wardens; these officials are named by the levy courts of the respective counties. In addition to housing long term prisoners, all county jails serve as detention pens for persons awaiting disposition of their cases. Under the new board of corrections, the county jails as such will be abolished. All prisoners will not be removed to the New Castle County Workhouse upon conviction for

felony. It is probable that one of the present county jails will be used as an institution for first offenders, another as a long-term maximum security lock-up, and another for misdemeanants serving only short terms.

Institutions for Juvenile Offenders

Institutions for juvenile offenders are maintained by the State. All of these are located in New Castle County. They are: the Ferris School for boys, the Woods Haven School for white girls, the Kruse School for Negro girls, and the Detention Home in Wilmington for juvenile offenders held for court. Recently plans have been underway to abolish both the Kruse and Woods Haven Schools and to shift their inmates to the Governor Bacon Health Center. Both the Woods Haven and Kruse Schools are not heavily populated, the total number of charges being less than fifty as a monthly average. These schools also supervise court-committed girls who are permitted to live in private homes.

The population of the Ferris School in 1954 was slightly over 100. Most of the youths are sent there from the Family Court for New Castle County and the Juvenile Court for Kent and Sussex. The superior court is also empowered to sentence juvenile criminals to the Ferris School. The board of trustees of the Ferris School has on occasion complained that the committing to their care of young parole breakers makes it impossible to conduct this institution as an industrial training school.¹⁴ One reason for this situation is that the authorities at the Workhouse have not wanted to keep young offenders, and the courts are apt to respect their wishes because the judges do not have a high opinion of the facilities for segregation of different types of offenders at that institution. Yet some of these boys are hardened criminals.

Both the Ferris School and the Kruse School were originally private corporations, but the boards of these institutions deeded them to the State. The Ferris School became a state institution in 1915, and the Kruse School in 1919. The present boards of trustees of these agencies are named by the governor. The Woods Haven School was begun as a public institution. The governor names only three members of a seventeen member board. The other fourteen members are coopted. All these schools are financed by the State treasury and the county treasury. Budgets are approved by the Permanent Budget Commission.

The Detention Home in Wilmington, was created by act of legislature in 1921. It serves the State, but the bulk of its attention is given to the housing of delinquents who are picked up in Wilmington and held for trial before the family court. The facilities of the Detention Home have long been insufficient to meet the increasing burden placed upon them. In 1955 the legislature authorized the building of a new detention home to be located in Wilmington.

Care of the Criminal Insane

With respect to those prisoners who are mentally ill, the law states that any person accused of crime who is acquitted by reason of insanity is to be placed in the Delaware State Hospital by the court before whom he was tried. The court may order his release if it is satisfied that the public safety will not thereby be endangered. Whenever, in a capital case, it appears to the court that a prisoner has become insane after conviction, the court has the power to appoint a commission charged with inquiring into the mental condition of such prisoner. If the commission finds the prisoner insane, then the court remands him to the care of the sheriff of the county in which he was convicted. The sheriff delivers him to the State Hospital for safe-keeping, and at such time as the prisoner becomes sane, the sentence which he first received is executed. Prisoners kept at the Workhouse who become insane are removed to the State Hospital. Recently the trustees of the hospital have acquired a tract of land on which has been erected the Governor Bacon Health Center. This is a modernly equipped public health center and among its facilities is a building for the care and treatment of the criminally insane.

Probation and Parole

The two aspects of crime and punishment in Delaware that have received the least amount of official attention are probation and parole. Again, the failure of the populace to take a decided interest in the problem of prisoner rehabilitation and in the problem of the treatment of criminals generally, has prevented vigorous assault upon outworn, out-dated methods of approach to probation and parole of offenders.

Probation. Probation is in the hands of the court. The State Code provides that the state judges may appoint a probation officer for each county, whose duty it is to investigate, at the direction of the court, the previous character, antecedents, and general reputation of any person under indictment before the court. The probation officer shall furnish the court with a report as to the conduct, mode of living, and habits of any person convicted and placed on probation. This officer also has the power during the vacation of the court to end the probation by making an arrest and certifying the facts of the breach of probation to the sentencing judge, who then may remand the prisoner to the sheriff of the county where the arrest was made. The prisoner may then be sentenced to imprisonment. The probation officer in each county also has the duty to keep an accurate record of the persons on probation within his charge.

Any person who has pleaded guilty or has been convicted of any offense, other than capital, before the superior court, the courts of common pleas, or the Municipal Court of the City of Wilmington, may be admitted to probation. If the prisoner complies with the terms of the probation dur-

ing the period in which he is released on his own recognizance, the plea or verdict of guilty entered against him is struck from the record.¹⁵

The Municipal Court of Wilmington has a separate probation officer attached to it. The judges of this court have given special attention to the development of an efficient probation system. The Family Court for New Castle County and the Juvenile Court for Kent and Sussex Counties appoint probation officers to work with them in the performance of their tasks. In the family court, he is called the director. The work of the probation service in this court is of an extremely high caliber in spite of the limited budgets. Some of the State's capable young people engaged in social work have found employment in the director's office. The present and former directors of the family court have done excellent work in connection with juvenile delinquency in the northern section of the State. The directorship is of much wider scope than the work of the probation officers in the lower counties' juvenile court.

Probation is, of course, closely linked with the other forms of correction—prison and parole. There is little doubt that persons presently admitted to probation could be dealt with more efficiently if the entire correctional system were more adequate. Unless attempts at reorganization encompass the whole system of corrections, Delaware's problems of law enforcement will continue to increase.¹⁶

Parole. Parole in Delaware is under the authority of a Board of Parole, which is appointed by the state supreme court. Three persons serve on this board for staggered terms of three years each. By custom, there is an appointment from each county. The board meets monthly for at least ten months of the year at the New Castle County Workhouse and at least once every three months at the Kent and Sussex County jails. The members receive a per diem allotment.

Every prisoner sentenced to one year or more, except for rape, incest or sodomy, or the possession or use of certain drugs, may, upon serving one-half of the entire term for which he had been sentenced, be released on parole. If a prisoner has been sentenced to life imprisonment, he is eligible for parole after fifteen years.

The warden or sheriff in charge of the jail usually makes a report to the board when a prisoner is eligible for parole, and after a formal hearing by the Board of the prisoner's application, a decision is rendered. The board specifies the conditions under which a parole is granted.

The board appoints a parole officer whose duty it is to aid prisoners released on parole to secure employment, to visit and exercise supervision over them while on parole, and to see that they fulfill the terms of the parole. If a violation of parole occurs, the president of the parole board may issue a warrant for the arrest and return of the parolee to the jail from which he was released.

The operation of parole in Delaware leaves much to be desired. Effort

is made to secure employment for released prisoners, but the staff is not large enough to handle adequately the rather large number of prisoners on parole. Extreme care has to be taken to insure the prompt and proper placement of paroled convicts, and this procedure necessitates highly trained personnel. The budget allotments for parole officer and his staff have not been sufficient to accomplish this. In 1943 the total expenditure for the operation of the parole system was \$4,200, including the participation in the uniform out-of-state parole act. In 1953 this figure had been raised to \$6,130, but is still highly inadequate in terms of the job to be done.

Psychiatric work, an important aspect of parole, cannot be performed by the board because it does not have the staff. Recently the board has been making use of the services of the State Hospital, and some improvement in the handling of parolees in need of psychiatric treatment can be noted.

The false economy that is characteristic of Delaware legislative action in respect of parole administration has been one of the reasons for the failure to establish an efficient system of law enforcement in the First State. Public apathy is at the base of this failure and all other problems of penological reform in Delaware, and unless the public insistently demands a re-thinking of the entire process of prevention, detection, prosecution of, and treatment for crime and delinquency, there will be no adequate solution.

The reorganization of law enforcement administration in Delaware is imperative. New concepts respecting the causes of crime, its detection, and its treatment need formulation. Careful and constant attention is required in order to develop the best means available to intelligent men for adjusting police, prosecution, and correction to the fast changing social and economic pattern of the State. Steps in this direction have already been taken, but the work still to be done is tremendous. Delaware has a long way to go before pulling itself free from the traditional practices inherited from another day, in which conditions differed from those of the present. Reorganization of the system of law enforcement is among the pressing needs facing modern Delaware.

NOTES

¹ See *Debates in Constitutional Convention in Delaware* (1897) (Dover, 1897), III. See also, *Wilmington News*, April 18, 21, 1952.

² *United States Statistical Abstract* (1947), p. 96.

³ *Ibid.*, (1952), p. 137.

⁴ See the *Wilmington News*, May 23, 1952 and February 23, 1953. There are over a score of offenses punishable by whipping.

⁵ The State Police reported an increase of 9 per cent in criminal cases investigated in 1952 over 1951 in the rural areas of the State. See *Wilmington News*, January 30, 1953. Crimes of all categories in 1953 totalled 6,224 as against 5,696 in 1952. See *Wilmington News*, February 13, 1954.

⁶ See *Revised Code of Delaware* (1953), Title 5, sec. 130, with respect to proceeding against banking corporations upon request of the Bank Commissioner.

⁷ 37 *Delaware Laws* 73 (1929).

⁸ See *Wilmington Journal-Every-Evening*, April 11, 1947.

⁹ Constitution of Delaware (1897), art. III, sec. 22.

¹⁰ The State Tax Commissioner may constitute his agents as special constables. *Revised Code of Delaware* (1953), Title 30, sec. 369.

¹¹ R. L. Wagner, "Administration in the City of Wilmington, Del." (MS. thesis, University of Delaware, 1952.)

¹² See *Report of the Federal Bureau of Prisons* on the New Castle County Workhouse, November, 1949, ch. 1, as reported in the *Wilmington News*, February 4, 1950.

¹³ See article by W. P. Frank in the *Wilmington News*, December 22, 1952.

¹⁴ *Wilmington News*, January 17, 1953.

¹⁵ *Revised Code of Delaware* (1953), Title 11, sec. 4321.

¹⁶ See editorial in the *Wilmington News*, January 27, 1953.



CHAPTER 13

Education

HISTORICAL BACKGROUND

PUBLIC EDUCATION in Delaware had very unpretentious beginnings. Although the constitutions of 1792 and 1831 contained pious statements calling upon the General Assembly to establish schools and promote the arts and sciences, little positive action was taken during the nineteenth century to establish a workable system of public instruction. Free schools in Delaware were first created in 1827, but education remained a highly local matter subject to the vagaries and tender mercies of local public opinion, which often applauded the spirit of the public schools without providing for their substance.

In the present constitution, public education has received the attention of a full article.¹ The General Assembly is enjoined to establish and maintain a "general and efficient system of free public schools," and it has the power to compel attendance. The constitution also requires the legislature to appropriate at least \$100,000 annually for the operation of the public schools. In the early years of the present century however, the legislature did not fully honor the intention of the constitution. Delaware sank to last place in the rank order of the states in the matter of making provision for the education of its young people. Nothing was done to establish an "efficient" or a "general" system of public instruction. Although a state board of education was established, the direction and maintenance of the public schools were left almost completely to the local communities. For the most part no attention was paid to the crying need for education. Each locality, whenever it felt the urge, could set up a school and receive aid from the State, but no supervision over the curricula or setting of standards for instruction were developed. No provision at all was made at state level for high schools. Attendance in the grade schools

averaged about seven months the year if the crude estimates of that period can be accepted. Delaware children in the main did not complete a standard elementary course of study.

Until 1917 there had never been a school census in Delaware. Administrators had little, if any, data upon which to build an efficient system of education. Knowledge of this grossly neglected situation finally reached the ears of the General Assembly. In 1917 that body sought the advice of the General Education Board, a national organization that had been founded by John D. Rockefeller in 1902. The board sent investigators into the State and made an impartial survey of the situation.²

In 1919 the report of the board recommending the establishment of a centrally controlled state school system was tendered the governor and the legislature. Copies of the report were made available for public distribution. The press began a vigorous campaign for legislative action on the report with the result that a bill was introduced in the General Assembly calling for a state-wide public school code and for the abolition of the crazy-quilt pattern of local schools. The then governor, John G. Townsend, Jr., had to use every means at his disposal to get the legislature to act. In spite of the efforts put forth by the press and the governor, the changes were not drastic. However, these changes did lead the way to a more efficient and thorough school system. Authority for the direction of the school system was placed in a state board of education appointed by the governor. County boards continued to be elective, but were subordinated to the state board. The schools under them were known as state school districts. Special districts, outside of county board supervision, were established for Wilmington and the large rural towns. Although many protests were voiced against the "centralization" of the schools, the legislature in 1921 eliminated the county boards entirely and created a state department of public instruction. In addition, a state school tax department was created in order to collect the revenue needed for the schools, and all funds for the use of the state districts (as distinguished from the special districts) were placed in the custody of the state treasurer.

Although the forces compelling the legislature to adopt a state educational program represented a goodly portion of the civic-minded citizenry, the central figure in the drive against the inertia regarding better education was Pierre S. du Pont. Mr. du Pont gave unsparingly of his time and money to see that a practical and substantial public educational system was established. He became the state tax commissioner charged with enforcement of the taxes that would be used only for school purposes. Abetted by several citizen groups, particularly the Parent-Teacher Association, he brought about the building of schools throughout the State, and he saw to it that the local citizens paid for part of the maintenance of these schools. The PTA was very useful in promoting the program for local support for the schools. Mr. du Pont was roundly criticized by

many people in the downstate area, but with his characteristic tenacity he fought through to final victory over those whose public vision was, to say the least, shortsighted.

STATE EDUCATIONAL ORGANIZATION

The organization of public education in Delaware falls roughly into two large categories. The first is the public school system, which includes (a) the state unit school districts or the districts operated directly by the State Board of Education and (b) the special school districts, which are maintained by both the State and the local communities. The second category is that of the institutions of higher learning supported by the State. These institutions are the University of Delaware and the Delaware State College.

The State Board of Education

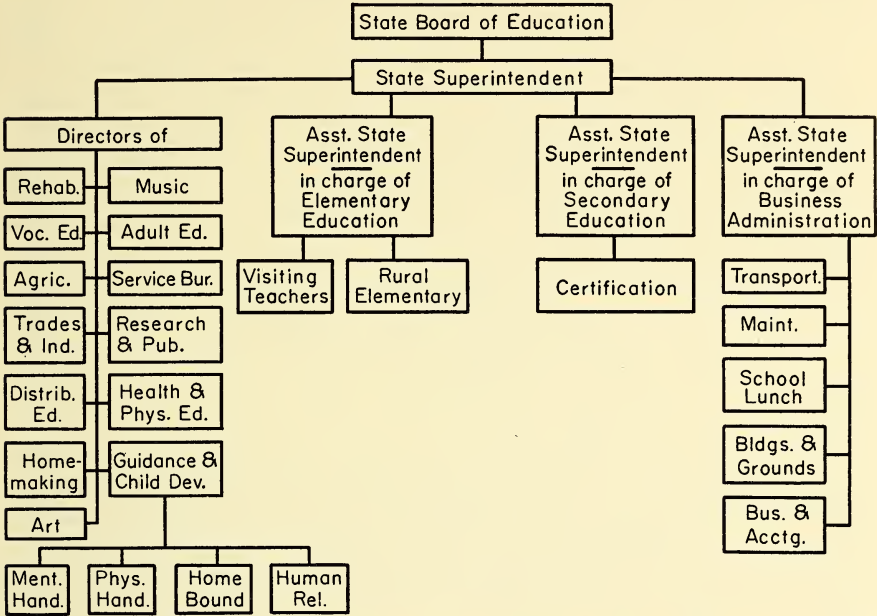
The State Board of Education consists of six members appointed by the governor for a term of three years each. County residence and party affiliation are taken into consideration by the governor when he makes his appointments. At least one person, by law, must be selected from each county, and the statutes require that three members from each of the two major political parties shall serve on this board. In addition there are two ex officio members: the president of the University of Delaware and the president of the Delaware State College; these members have no vote.

The board, acting under statute, determines the educational policies of the State. It hires, through its proper officers, the teachers and administrators for the state school districts. It governs the choice of text books. The qualifications of teachers and administrators in all the public schools are set by the board, and in conjunction with the University of Delaware, it provides for their future training. The general care and instruction of students in the public elementary and high schools are within the powers of the State Board of Education. It sets the school calendar and provides for the enforcement of attendance. Each year the board submits a report to the governor covering all its operations, and states the condition and needs of education in the State. Recommendations for changes in the educational system are made by it to the governor and to the General Assembly. The members receive a per diem allotment for their attendance upon meetings of the board.

The Department of Public Instruction

The Department of Public Instruction is the administrative organization for the formulation and execution of policy concerned with the operation of the public schools. The department is under the direction of the State Board of Education. The chief administrative officer, who is appointed

by the board, is the State superintendent of public instruction. Three assistant superintendents are in charge of the three main divisions of the department: secondary education, elementary education, and business administration. In addition, there are seven directors in charge of research,



ORGANIZATION OF DEPARTMENT OF PUBLIC INSTRUCTION IN DELAWARE

art education, music education, health and physical education, vocational education, adult education, and child development and guidance respectively.

State Superintendent of Public Instruction

The State Board of Education appoints as its executive secretary a State superintendent of public instruction. He serves for one year and is eligible for re-appointment. The board fixes his salary. He must be a graduate of a standard college and not have had less than five years' experience in teaching and administration. The superintendent may be removed by the board for immorality, misconduct in office, incompetency or willful neglect of duty, upon making known to him in writing the charges against him, and giving him an opportunity to be heard, in person or by counsel, in his own defense.

In addition to serving as the executive secretary of the board, the superintendent of public instruction is the chief administrator of the state school system. He is the supervisor of the instructional staff of the state school units, and he is charged with seeing that the provisions of the school code are followed in the special school districts.

School District Organization

The organization of the public schools consists of (a) the state districts, (b) the special districts, (c) the high school districts, and (d) the Special District of the City of Wilmington. Each district is under the control of a school board, either appointed by the resident judge of the county in which the district is located, or elected by the voters of the district.

The State Districts. There are ninety-two state districts. Each district has a board of trustees of four members who are the representatives of the State Board of Education. In New Castle the trustees are appointed by the resident judge.³ In Kent and Sussex they are elected by the qualified citizens of the district. The term in each case is four years. The actual hiring of school employees in a state district is done by the school trustees, but each principal and teacher engaged must meet the standards adopted by the state board. Any position vacant because of the inability of the trustees to find a suitable applicant for the job is filled directly by the state board. Any employee who is dismissed may appeal to the state board.

Special Districts. Although the school law of 1919 and its subsequent amendments sought to create a centralized state school system, it was generally recognized by many of the educational leaders in the State that the larger municipalities would want to provide educational facilities in addition to those received from the State. Accordingly, provision was made to establish special districts. At present there are fifteen of these, not counting the consolidated district of Wilmington, which stands in a category separate from all the public school districts throughout the State.

In order to establish a special school district a petition approved by the majority of the voters in the area concerned must be presented to the State Board of Education. The board, after it has ascertained that certain requirements concerning number of teachers, classrooms, and other facilities have been met by the petitioning district, establishes the special district.

Special school districts may be dissolved through a petition of its board or through a petition signed by twenty-five voters in the district after the petition has received a majority vote of those voting in a general school election. The district then is made subject to the immediate authority and supervision of the State Board of Education.

In each special district there is a school board. In New Castle these boards are usually chosen by the resident judge; in Kent and Sussex they are elected.* Four members serve on each board for terms of four years each.

* Under special statutes, the boards in Claymont, Middletown, New Castle, and Rose Hill-Minquedale districts in New Castle County are elective. *Revised Code of Delaware* (1953), Title 14, sec. 302.

The special school district board has wide powers. It determines the educational policies of the districts and prescribes rules and regulations for the management of the schools in the district. Subject to the approval of the state board, it may establish grade schools, high schools, and kindergartens. It adopts courses of study and provides materials of instruction such as texts, maps, stationery. It reports directly to the people of the district annually.

The special district administration differs from that of the state districts. In the latter, the trustees act as the administrative committee. In the special districts, the board appoints a superintendent. He is the secretary of the local board. He is responsible for the administration and supervision of the public schools in his district. Under regulations of the state board, he conducts the biennial school census. He interviews prospective teachers and recommends their appointments to the local board. The superintendent, with the approval of his board, drafts the district budget, which is submitted to the State Board of Education for approval.

High School Districts. In addition to the state districts and the special districts, there are several high school districts. These districts are located outside the special districts. In general, they comprise two or more state districts. The high school districts are created by the state board. They may not include any portion of a special school district without the consent of that district. Seven members serve on the board of trustees of each high school district. They are appointed by the resident judge of the county.⁴

The Special School District of the City of Wilmington. As a result of an act of the legislature in 1906, the city of Wilmington enjoys its own school system. Although subject as are all public schools in Delaware to the general jurisdiction of the State Board of Education, the Wilmington system has a degree of autonomy not possessed by the special districts.

The Wilmington Board of Education is composed of six persons appointed by the resident judge of New Castle County. The board in turn appoints a superintendent, who manages the school system working with a highly specialized staff of administrators whom he appoints. Taxes covering the city's share of the school budget are levied by the city council upon the recommendation of the Wilmington school board. The council may not change the recommendations.

The Wilmington school district operates a vocational high school and cooperates with the rehabilitation program conducted by the State Board of Vocational Education.

SCHOOL FINANCE

The bulk of the money spent for public schools in Delaware comes from the State. No other state in the Union has the type of educational organi-

zation that obtains in Delaware, and the means of obtaining financial support for the schools is perhaps the most outstanding characteristic of this uniqueness. Moneys are appropriated biennially by the state legislature for the state districts, the special districts, Wilmington schools, and for the high school districts. In the case of the state districts this is usually the only money received, but the special districts may and do raise additional sums from local taxation and bond issues. Thus the special districts as well as the state districts depend upon the State for financial assistance. Hence, it is in the fiscal sense that one can best speak of a unified, centralized system of education in Delaware. In spite of their financial dependence, a fair degree of local autonomy exists, particularly in the special districts, where there is a definite feeling of local responsibility and local authority. The fact that the local districts, both special and state, depend upon the General Assembly for a sizable amount of their funds, does, however, make them extremely conscious of the State and state authorities. All school budgets are reviewed by the State Board of Education.

School finance in Delaware has three basic problems. First, how to meet the rising costs of education; second, where to raise the revenue; and third, how to allocate the state funds among the various districts.

Rising School Costs

In 1940 Delaware spent approximately \$5.5 million for the construction and maintenance of its public schools. In 1953 the figure stood close to \$26 million. The approximate annual cost of educating a student in elementary and secondary grades in 1940 was \$110; in 1953 it was close to \$300. In 1940 less than \$1 million was spent in the erection of new schools; in 1953 capital outlay was over \$10 million. Table 13 shows the increasing costs of education in the First State.

TABLE 13
EXPENDITURE FOR PUBLIC SCHOOLS IN DELAWARE, 1940-1953

<i>Year</i>	<i>Capital Outlay</i>	<i>Current Expense</i>	<i>Total</i>
1954	\$ 4,062,000	\$18,096,000	\$22,158,000
1953	10,327,827	15,861,997	26,189,824
1950	6,942,601	12,355,169	19,297,770
1945	214,140	5,197,585	5,411,725
1940	994,056	4,536,933	5,520,989

Delaware is not unique in being confronted with the problem of mounting costs. The real problem facing the State is how to meet these increases. The state government pays approximately 90 per cent of the costs of education, yet it levies no school tax as such. A minor general property tax for the use of the schools is levied in the state school dis-

tricts, but this tax accounts for less than 4 per cent of the total state expenditure for education.

Sources of School Funds

As indicated above, the State expenditures constitute the largest portion of the moneys used in education in Delaware. In 1948 it contributed 86.5 per cent of the costs; in 1952 its share was 91.7 per cent. The rest of the money comes from the local districts. All the special districts and the district of the City of Wilmington provide support for the schools from local taxes. In addition, several of the state districts may levy a general property tax under authority of their local trustees. In 1950 five state districts raised taxes; whereas, in 1953, sixteen state districts were giving additional support to their schools. The special districts and state districts that levy school taxes do so by a general property tax, collectible by the county treasurer for the use of the schools. The tax is based on assessed valuation of real property in the district.

In 1897, when the constitution prescribed the institution of a free school system, a fund was established in the amount of \$100,000 and the General Assembly directed to supply a sum in this amount annually. This is the only constitutional injunction in respect of school finance. Until 1919 little was done beyond this in way of meeting school costs. In that year the legislature passed a general income tax which was specifically levied for the use of the schools. In 1923 a filing fee law was enacted; this law required every citizen of Delaware to pay a small sum (\$3.00) whether he paid an income tax or not. In the following biennium the office of school tax commissioner was established by the legislature. His task was to make sure the tax was collected and applied to the school system.

Today no taxes are earmarked for school use. Most school authorities are opposed to earmarked taxes, realizing that rising educational costs make it necessary to look to the general treasury for their finances rather than to a special source that might not yield the needed income at a specific time. Furthermore, there is opposition by the school authorities to earmarking of revenue for other purposes such as highways, inasmuch as this deprives the general treasury of funds to be used for general purposes, of which schools are perhaps the most important.

Bonds may be issued by local school boards (both special and state) not to exceed 10 per cent of the assessed value of the real property in the district. Before any bonds are authorized, a special election must be held to ascertain whether the bonds shall issue. All citizens vote in these elections, not just the property owners. The State also issues general purpose bonds, many of which are used for the capital outlay for the erection of public schools. These bonds need no referendum.

Apportionment of State Funds

In apportioning money to the schools no distinction is made by the State between special and state unit districts. The distribution is made on the following basis:

1. Under state law there is a salary schedule that the State uses as the basis for paying to the districts money to support teachers. The sum paid is equal to the number of pupil units in the schools of the district. A unit is composed of twenty-five students in the elementary school, and composed of twenty students in the high school.
2. Each district receives an additional \$550 for each unit of pupils to cover operating expenses.
3. At present the State supports building programs on a 60-40 basis, the State paying 60 per cent and the local district paying 40.
4. Moneys are furnished to the districts for needed repairs as revealed by a survey conducted by state officials.

Although the State provides the preponderance of the moneys for public schools it also provides services that cannot be specifically apportioned. General supervision of the instructional program in the State is perhaps the most important of the services furnished the local districts by the State. By means of general supervision, standards are set and maintained thus bringing to the local schools a sense of responsibility for improvement. Ancillary services such as driver education, programs in music and art education, research and publications, and promotion of programs in vocational education are furnished the schools by the State Department of Public Instruction.⁵ Particularly in respect of research in methods of instruction, and testing of abilities of students have been provided for all the public schools. The information derived from the tests placed at the disposal of the faculties. Although not directly connected with the local public school instructional program, adult education has been provided by the state authorities in the local districts. This program aids the schools in that it helps build and maintain parent interest in the educational system. The State furnishes the clerical help needed in connection with the program in adult education.

STATE SCHOOL ADMINISTRATION

In addition to its supervision of the instructional program in the public schools, the State Board of Education is concerned with the administration of activities and programs closely associated with the educational aspects of school organization. School attendance, pupil transportation, buildings, segregation, and school lunches, are the five major areas in which the state authorities are directly involved. The last of these, segregation, is facing

elimination, but it still remains a difficult administrative problem for the State board.

School Attendance

According to statute, every parent, guardian, or other person in the State having control of a child between the ages of seven and sixteen years who resides in the state must send such a child to a free public school each day of a minimum school term of 180 days. Attendance in private schools, approved by the state authorities, is permitted in lieu of enrollment in a public school. Mentally and physically handicapped children are exempt from the compulsory attendance requirement. Truants may be committed to the several juvenile corrective institutions.

Delaware presently has a rather enviable record for pupil attendance in the public schools. Since 1940 the average daily attendance has been above 90 per cent. Table 14 depicts the enrollment and attendance in the public schools between 1940 and 1953.

TABLE 14
ENROLLMENT AND AVERAGE DAILY ATTENDANCE IN DELAWARE
PUBLIC SCHOOLS, 1940-1953

<i>Year</i>	<i>Enrollment</i>	<i>Average Daily Attendance</i>	
		<i>Number</i>	<i>Per Cent</i>
1954	56,340	50,250	93.4
1953	52,724	46,551	93.1
1950	47,540	42,105	93.4
1945	42,315	35,834	90.7
1940	44,372	38,882	92.3

Transportation of Pupils

The State Board of Education, with the advice of the motor vehicle commissioner, who is the state official in charge of licensing of motor vehicles, adopts and enforces regulations governing the design and operation of all school busses used for the transportation of school children, whether these busses are owned and operated by a school district or pri-

TABLE 15
TRANSPORTATION OF PUBLIC SCHOOL PUPILS IN DELAWARE, 1940-1953

<i>Year</i>	<i>Number</i>	<i>Total Cost</i>	<i>Cost Per Pupil</i>
1954	20,486	\$745,968	\$36.42
1953	18,095	674,516	35.08
1950	15,248	487,368	31.30
1945	9,874	318,420	32.25
1940	11,146	305,406	27.23

vately owned and operated under contract with the state board or district boards. Violation of these regulations by school employees is a serious offense and may result in prosecution and/or dismissal. The state board is strict in the enforcement of its rules.

Approximately 30 per cent of the public school students are transported. With the increase in enrollment and the rise of the sprawling suburban and outlying communities there has been a steady rise in the percentage of pupils using the school busses.

School Buildings

One of the main problems of Delaware today is that there are far too few schools to accommodate the ever-increasing school-age population. One of the driving forces behind the revision of the education program in the early 1920's was the recognition of the need for new school buildings. The Service Citizens of Delaware, a civic group under the guidance of Mr. Pierre S. du Pont, worked to develop a school building program for the entire State. Mr. du Pont gave over \$3 million for the construction of buildings. Others gave time and funds, with the result that the legislature was finally forced into passing legislation whereby local school districts matched the funds donated by private interest groups. At state level, changes in the income tax law were made, enabling more funds to become available for the use of the school building program. The battle in the legislature was not won easily, but in 1927, that body had to bow to the opinion of the articulate elements in the State.⁶

Had it not been for short-sightedness on the part of the General Assembly in the period immediately following World War II, the present lack of school buildings would not have occurred. Instead of letting contracts for the immediate erection of new schools necessitated by the increasing population, the governor and the General Assembly sought to curtail public spending. The result was that in 1949, the new administration was forced to cope with an almost intolerable situation. Double shifts were in vogue in most of the schools in New Castle County. Special classes in art, music, and drama had to be suspended because no space was available. Physical educational programs were eliminated, and the school day shortened. By 1950 the situation had grown so difficult that mass meetings of the citizens working through their Parent-Teacher Associations insisted that the State take action. Finally a commission to study the need for new buildings was set up, and as a result, a School Building Program Board was established by the legislature. The School Building Program Board consists of the governor, the secretary of state, and the president of the State Board of Education. The board is charged with making surveys of the various districts, ascertaining the need for school construction in each, and determining the building programs for each of the districts. The decision of the board is transmitted to the State Board of Education, and

then in conjunction with the local districts, the State authorizes the necessary work orders for the construction. Thus, there is now some plan whereby it is hoped that the current needs for school plants can be handled immediately and adequately. The legislature, in 1951, set the total amount to be borrowed for the building program at \$10,580,000. The maximum share of the local communities was set at \$5,850,000 to be raised by local bond issues. The total cost both to the State and localities was \$16,424,318.⁷

Segregation

One factor that has prevented the full utilization of funds for the promotion of an adequate educational program in Delaware is segregation. The state constitution requires that separate schools be maintained for white and colored children.⁸ The statutes require further that in addition to the schools for white and for colored children (colored here means Negro) the State Board of Education must maintain schools for the Moors, who are descendants of the Nanticoke Indian tribe, which is indigenous to Delaware. There are today very few Indian schools.

For a small state such as Delaware, segregation has been very costly. Providing equal facilities for white and Negro children means that, in some cases, school buildings are not used to capacity and supervisory costs are increased.

There was no legal challenge to the requirement that there must be separate schools for white and Negro children until late in 1947 when a group of Negro students sought admission to the University of Delaware, contending that the offerings at the Delaware State College then a Negro institution, were not adequate under the equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution. In January, 1948, the board of trustees of the university resolved that "any colored resident of the State who is able to meet the established requirements for admission to the University of Delaware may be admitted to pursue a course of study of his choosing leading to a certain degree for which a course of study is not furnished in any educational institution provided by this State within this State for the education of bona fide colored residents of this State."

Some Negro students were admitted to the university under this resolution. In January 1950, however, a group of Negro students demanded the right to attend the university if they were qualified to enter regardless of whether or not Delaware State College offered the courses they desired. The case was heard before the chancellor of the State, and on August 9, 1950, the chancellor decreed that these students would have to be admitted to the university.⁹ The university refused to appeal his decision and the students were admitted. Thus ended segregation in the higher public educational institutions in the State.

The decision to admit Negroes to the state university immediately set off an effort on the part of colored civic associations to get the segregation bars down at the lower levels. Abetted by the fact that the parochial schools of the State had decided to admit Negro students in 1949-50, the movement for desegregation gained headway. In 1952 the parents of several Negro students in the Claymont and Hockessin elementary schools contended that facilities afforded whites were not available to their children in the colored schools of those districts. The cases came before the chancellor who decided that equal facilities were not in fact present and ordered Negro students admitted to the white classes. Appeal was taken by the state board from this decision to the supreme court of the State, which essentially upheld the chancellor. Appeal was then made to the United States Supreme Court, and segregation was declared unconstitutional by that tribunal on May 17, 1954.¹⁰

In the meantime the attorney general of the State had advised the state board of education to admit Negro children to white schools "where inequality is obvious and not reasonably disputable."¹¹

Thus it appeared at the beginning of the school year in 1954 that integration was well on its way in Delaware. As the term began, however, a group of citizens in the town of Milford, led by some out-of-state organizers, boycotted the public schools upon learning of an integration order by the local board. During the ensuing weeks the State Board of Education and higher state authorities were not successful in bringing the impasse to an end; the result was that Negro students already admitted to the white schools were barred from attendance. Flare-ups began to appear in other downstate towns, and the initial effort toward peaceful transition from segregation to integration failed. The end of segregation is not now in sight in Delaware, and probably nothing concrete will be accomplished in the movement toward universal integration until the United States Supreme Court takes definite implementary action against segregation in the public schools of the Nation.¹²

The School Lunch Program

Without a sound body the development of the mind may lag. This basic theory has underlain the many attempts throughout the nation to see that proper nourishment is given the young. School health programs have long held to the idea that school children must have at least a minimum of certain kinds of food, and that if it cannot be provided for them by their parents, then it is the responsibility of the public authorities to see that it is furnished. The Federal government, through the Department of Agriculture has made funds available to each state under a formula "by which the share of a state varies directly with the number of children of school age and inversely with its per capita income."¹³ In 1948 fifty-seven

Delaware schools served a free school lunch; today there are eighty-four that offer the midday meal. Much of this increase can be attributable to the help from the Federal government.¹⁴ Over 23 per cent of the public school pupils obtain some food under the Free Lunch Program. Only \$74,000 was received by the State from the Federal government in 1952 to offset the cost of food furnished without cost to the students. National School Lunch funds allocated to Delaware have not been sufficient to offer maximum reimbursement rates as prescribed by the National School Lunch Act, because the State has not matched the maximum grant made available by the Federal government.

THE INSTRUCTIONAL PROGRAM

The instructional situation in the public schools varies from state to state. Customs, traditional approaches, community wealth, and size of population are some of the important factors in determining the type and standard of education found in an American commonwealth. Delaware has felt the impact of the forces calling for an expansion of the school curricula that are transforming the educational systems in many of our larger states. The demand for change in the instructional program has become stronger recently in the First State. This demand reflects the changing social attitudes particularly in the northern section of the State. Although the legislation of 1919 moved in the direction of a modern state-wide system, this was only the start of a trend. It was not until 1940 that serious attention on the part of large numbers of the citizenry was given to the need for improvement in the educational facilities of the State.

Curricular Development

Evidence of the changes in the public school curricula can be seen in the introduction of new courses in both the elementary and the high schools. Greater emphasis has been placed upon the improvement of spoken and written English, and new courses in these fields are constantly being devised. Programs in art, and music have been instituted. At the secondary level the curriculum includes the academic, scientific, vocational, commercial and general courses of study. Laboratories and libraries have been established in all the high schools, and many of the local grade schools are equipped with fairly comprehensive libraries. Gymnasiums and outdoor athletic facilities are part of the standard equipment of all public schools. Special courses have been introduced for the benefit of those who have difficulty in reading and writing. Ancillary instruction in such disparate fields as typing and auto-driving are now part of the standard offerings in the high schools. Constant effort is being made by the school faculties and administration to offer instruction in those matters

that make a child a well-informed citizen capable of earning his livelihood and able to enjoy profitably the increasing leisure time resulting from the labor saving devices of modern society.

School Textbooks

By statute the State Board of Education is directed to prescribe rules and regulations governing the choice of textbooks to be used in all public elementary and high schools of the State. The board fixes in conjunction with the publishers the price at which the respective texts shall be sold in the local schools. Once a text is placed on the approved list of books it may not be dropped for a period of four years. All texts are supplied without cost to the pupils. Nominal charges are sometimes made for supplementary materials used in connection with laboratory work and in special courses.

There have been a few difficulties in the matter of excluding certain non-texts from the shelves of the school libraries. Certain books have been questioned for their political content, but such instances fortunately have been rare. There is little of the controversy over texts and supplementary reading material that has raged in some of the larger cities of the Nation.

School Health

Although the State Board of Education is charged with the maintenance of the health of the school children, it receives valuable assistance to this end from the State Board of Health. Mobile X-ray units are available to the schools, and Board of Health doctors operate clinics for school children. Courses in hygiene and physiology are furnished the students in both grade and high school. Daily inspection by school nurses is available in the elementary classes for the purpose of observing any health problems among the pupils. Free immunization is offered students against diseases such as typhoid, tetanus, and diphtheria. Dental health is maintained through a rigorously enforced inspection performed by oral hygienists employed by the State Board of Health. Aid is given pupils who cannot afford necessary dental corrections.

Special Education

In addition to the public schools in the state and special districts there are special schools for handicapped children. The education of children who are extremely mentally retarded is done by the Governor Bacon Health Center. For those who are of sound mind but have handicapped bodies, special training is available under the Vocational Education Program. Much of this work is under the auspices of the State Board of Vocational Education, the members of which are the same as those serving on the State Board of Education.

One section of the Vocational Education Program is the Vocational Rehabilitation Division. Anyone who is over sixteen years of age and is physically handicapped, and who wishes to be trained to earn a living may apply for help from this division. During 1953, over 1,200 persons were trained under this program. The division operates a placement service and practices post-placement surveillance of its clients. The Federal government supplies approximately 63 per cent of the costs of operation and the state government 37 per cent.

The Delaware Commission for the Blind makes training available for students of school age who are blind. Deaf and dumb children are taught privately with the State providing private instruction. If a pupil wishes to attend an institution for the education of the deaf or dumb in some other state, the judges of the superior court, who act as the trustees for the indigent deaf and dumb in Delaware, may certify such institution to the governor, who is authorized to draw a warrant to cover the expenses involved in such attendance.

THE PROBLEMS OF TEACHERS

Although much emphasis has been placed upon improvement of the physical aspects of education such as buildings, playgrounds, and other facilities, and upon the need for curricular changes, the most pressing problem of any educational system is how to obtain a sufficient number of able and qualified teachers to man the schools. Training, certification, salaries, tenure, retirement, and teacher supply are the particular facets of the big problem of manpower for the schools. Traditionally this problem has been the most neglected aspect of public education. Ignorance of the need for good teachers and parsimony have been the distinguishing features of public indifference to the increasingly serious situation in which understaffed and badly manned schools are finding themselves today. Until recently little attention had been paid in Delaware to the necessity for obtaining the very best of those qualified to teach the young. Fortunately, this attitude has changed remarkably, and today the chief concern of public educational administrators is to select and employ only those highly qualified in the teaching profession. Slowly, boards of education and the general public are recognizing the fact that the hiring of low-paid, incompetent teaching personnel is short-changing the future citizens of the State.

Teacher Training

The State Board of Education prescribes the rules governing the acceptance of diplomas from normal schools and colleges and universities as evidence of training for the teaching profession. No courses may be offered within the State for the training of public school teachers without the prior approval of the State Board of Education.

Under statute the State Board of Education and the University of Delaware enter into agreement for the conduct of a summer school for teachers already employed and for prospective teachers. All or part of the expenses attached to attendance at the summer school, which is held at the university, are paid for by the State. The greater portion of the teachers in Delaware have received their education outside the State, but within recent years a steady stream of graduates from the School of Education at the University of Delaware is helping fill the increasing number of job possibilities in the field of public education.

Certification

The setting of qualifications for the public school teachers and the granting of certification to teach is done by the State board. Since 1940 there has been a constant movement to increase the qualifications and not to grant certification until these are met. Because of the severe shortage of teachers during the years immediately following World War II, it was impossible to maintain standards, and many ill-trained teachers were employed. The school authorities sought to correct this condition, so that by 1953 only one teacher held a temporary emergency certificate. In 1946, 184 out of some 1,600 teachers were inadequately trained. In 1947 the number had dropped to 141 out of 1,755, and in 1948 it went down to 90 out of 1,765. Today, Delaware teachers are among the better trained in the country.

As part of the qualification for teaching in the State, all public school teachers are required to take an oath to support and defend the Constitution of the United States and the Constitution of the State of Delaware. There is no "test" oath* in force in Delaware, and no effort has been made to enact such a requirement. To the writer's knowledge no incidents have arisen concerning the general problem of subversion in the public school system.

Teachers' Salaries

As intimated above one of the most powerful reasons for the presence of badly trained teachers in the public school system is the low rate of salaries paid to educators. Delaware is not unique in fighting this battle, but until recently the salary scales were such as to attract very few good teachers to the State. In 1946 the average classroom salary was \$2,118, whereas the national average was \$2,026, but the neighboring states of Pennsylvania, Maryland, and New Jersey, paid \$2,155, \$2,397, and \$2,441, respectively.¹⁵ There was a relative improvement in 1947. By 1952, however, Delaware had forged ahead of its neighboring states. The

* A "test oath" is an oath required of teachers in some states; in the oath a teacher must state whether he does now or ever has belonged to a subversive organization or group.

average for the State was \$3,892, which was better than the rates offered in New Jersey, Pennsylvania, and Maryland. The national average in that year was \$3,192. Although the average figures are favorable to Delaware, the upper limits in the salary scales do not tend to keep experienced teachers. With ten years' experience and holding a doctor's degree a teacher in Delaware has the prospect of top salary of \$5,300 annually. Few teachers hold this degree, and the rates applying to those with the master's degree stop at \$4,900. Legislation has been proposed to improve these rates. Recently the Federation of Delaware Teachers has asked the Wilmington Board of Education (whose rates are slightly above the state rates mentioned above) to make tentative plans for an adjustment in teachers' salaries.¹⁶

Teacher Tenure

Closely allied with adequate salaries as a condition for securing competent teaching personnel is tenure. Teachers in Delaware have tenure under legislative action taken in 1955.¹⁷ The struggle for some guarantee of job permanency waxed fiercely over the past decade. In 1941 the teachers of the State banded together to form a teachers' federation; one of the major goals of this group was the establishment of tenure for teachers. In 1955 their efforts were successful.

Under existing legislation a teacher has the right to appeal to his board if he is dismissed anytime after the completion of three years' service, two of which must be within the district. If the board sustains the dismissal, the teacher may then appeal to the superior court for the county. The court conducts the appeal under the Rules of the Superior Court, the teacher and the board having the right to counsel, to the calling of witnesses, and to cross-interrogation. If the decision is in favor of the teacher he is reinstated with the right to arrears in pay. Termination of a teacher's services may result from "immorality, misconduct in office, incompetency, disloyalty, neglect of duty, or willful and persistent insubordination."¹⁸ The hearings before both the board and the court are public.

Teacher Retirement

All employees of the State, including all teachers in the public schools and universities or colleges are covered under a state retirement plan. No charge is placed upon the employee under this plan. Teachers are also eligible for social security payments under Federal law. They contribute to this program. The amount of pension received including both State and Federal payments ranges between \$75 and \$250 monthly depending upon the length of time employed and the salary received during the years of employment. Employees may be retired at their own option upon reaching the age of sixty years, or upon the employer's option at sixty-five years. Mandatory retirement takes place at seventy-five years of age.

Any employee who becomes disabled while in employment covered by the state retirement plan after having served for at least fifteen years is kept on active salary for a period of three months after incurring disability; he then becomes eligible for the regular retirement plan. The Disability Commission, consisting of the state treasurer, the superintendent of the State Hospital, a medical representative of the employee, and one lay person appointed by the governor, serves as the authority to decide any contested point with respect to the retirement benefits of the employee, who has been disabled.

Teacher Supply

The number of teachers, principals, and superintendents employed in all of the public schools of Delaware during 1953 was 2,287. The elementary teachers numbered 1,172, and high school instructors numbered 985. Of the total number of teachers 586 were employed in the Wilmington schools. The total number of teachers employed in the State in 1953 represented an increase of 100 per cent over the number employed in 1940. To meet the increased demand for teachers in recent years the state board called upon the University of Delaware to expand its teacher training facilities. The expansion was effected, and today graduates of the University of Delaware fill about 100 of the 300 positions open each year. Great effort has been put forth by the University to meet the rising demand for teachers, but because of Delaware's small population the number of teachers now furnished seems to be near the maximum number possible. Delaware probably will have to continue to look outside its borders for the bulk of its teachers.

HIGHER EDUCATION

Higher education in Delaware, which is supported at least partially at public expense, is obtainable at the University of Delaware and to a lesser degree at the Delaware State College. The former is the state university while the latter is a college attended largely by Negro students.

The University of Delaware

The University of Delaware is a land grant college consisting of undergraduate schools of arts and science, agriculture, engineering, education, and home economics. Graduate study is offered by the university in the division called the School of Graduate Studies; this school gives both master's degrees and doctor's degrees. Doctoral degrees are awarded in only a few fields, chiefly the sciences.

The university is situated in Newark, a town of approximately 10,000 persons, located some fourteen miles southwest of Wilmington. Its main buildings are in the Georgian style, and the classical arrangement of the

campus, which comprises over ninety acres, makes it one of the most attractive places in the State.

The governing authority of the university is vested by law in a board of trustees. Four officials of the State—the governor, the master of the State Grange, the president of the State Board of Education, and the president of the university—serve as *ex officio* members. Eight trustees are appointed by the governor, and twenty are elected by the board itself. The term, except for three life trustees, is six years. The total membership is thirty-two. The trustees have control over and the responsibility for the management of the affairs of the university, with power to appoint and remove all subordinate officers and agents and to make by-laws for the government of the university as well as for that of the board.

The president of the university is appointed by the board. He is aided in the performance of his administrative duties by a provost, a dean of the university, and deans of the several schools.

According to state law, the university was established in order to advance the pursuit of knowledge in scientific and classical studies, military tactics, agriculture, and the mechanical arts, and in such subjects as will best promote the liberal and practical education of the citizens of the State.

The student body has risen steadily since 1945. In that year there were less than 1,000 regular students. In 1953 there were approximately 1,800 full time day students, over 2,000 extension students (pursuing academic and scientific courses held throughout the State but concentrated in Wilmington), and nearly 600 graduate students, most of whom, however, are part-time. The staff exceeds 250 instructors and researchers. Recently, the policy of the university has been broadened to include instruction in some of the more practical arts and crafts. The university serves in a consultative and advisory capacity for many of the state agencies, and it is currently cooperating with the Federal and State governments in the promotion of agricultural training programs under the direction of its Agricultural Extension Service.

The faculty is well regarded locally and nationally. There is a very high percentage of doctors of philosophy among its membership, especially in the School of Arts and Science, which forms the core of the instruction given by the University. The annual budget of the institution exceeds \$2 million most of which is met by appropriation from the legislature. Student costs consisting partly of tuition fees, however, are relatively high for a state university. The university enjoys the return from substantial endowments, and some of its more imposing buildings have been the gifts of generous benefactors.

Delaware State College

Delaware State College, which is located near Dover, is attended mostly by Negroes. Until 1950 it was officially a college for Negroes. It is not

an accredited institution of higher learning, and its instruction program is not in any way comparable to that of the university. The absence of a modern college library and the poor laboratory facilities are among the more outstanding inadequacies of this institution. There has been a constant effort within the past decade to abolish this college and have all its students, who are eligible, attend the university, but this movement so far has not been successful. It was the lack of equal facilities afforded Negroes in college instruction in the State of Delaware that brought about the original move to end educational segregation in the state.

NOTES

¹ Art. X.

² Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), II, ch. 40.

³ As to the controversy whether school boards should be elective or appointive, see article by the author in *Wilmington Sunday Star*, September 23, 1951.

⁴ *Revised Code of Delaware* (1953), Title 14, sec. 2507.

⁵ *Report of the Department of Public Instruction for 1953*, State of Delaware, (Dover, 1954.).

⁶ See Reed, *op. cit.*, II, 705.

⁷ 48 *Delaware Laws* 148 (1951).

⁸ Art. X, sec. 2.

⁹ *Parker, et al. v University of Delaware*, Court of Chancery, State of Delaware, August 9, 1950.

¹⁰ *Brown v Board of Education*, 347 US 483 (1954).

¹¹ See *Wilmington News*, October 7, 1953.

¹² See *Ibid.*, September 23-27, 1954.

¹³ See pamphlet by Commission on Intergovernmental Relations released June 11, 1954.

¹⁴ See *Report of the Department of Public Instruction, op. cit.*, p. 26.

¹⁵ *The New York Times*, December 30, 1947.

¹⁶ *Wilmington News*, September 13, 1954.

¹⁷ 50 *Delaware Laws* 39 (1955).

¹⁸ 50 *Delaware Laws* 39, sec. 1420 (1955).



CHAPTER 14

Public Health

HISTORICAL BACKGROUND

PUBLIC CONCERN for the maintenance of healthful conditions in the Delaware community began with the attempt to reduce the ravages caused by yellow fever and other rampant epidemics in the latter part of the eighteenth century. As early as 1789, the Medical Society of Delaware, actually formed some years prior to this date, was incorporated in the First State. Although no official action was taken by the public authorities in the matter of controlling medical practice until 1819, the members of the medical society attempted to improve the standards of the medical profession. It is to be readily admitted that the practice of the art of medicine at the turn of the eighteenth century was emersed in the gray fog of ignorance, but it also was a fact that serious attention was being paid to the dissipation of that fog by some of the most outstanding doctors in the country, several of whom resided in Delaware.

In 1819 the General Assembly under prodding from the medical society passed the "Medical Practice Act," which became the basis for the present public control over the art of healing. This act provided for the licensing of physicians upon examination. Medical knowledge was to be acquired by attendance at some reputable medical college for at least one year; but it was not until 1883 that the old practice of "reading medicine" in a preceptor's office was abolished completely and a medical degree made a prerequisite to receiving a license.¹ In the next decade, provision was made for examination in homeopathic as well as in allopathic medicine. Actual licensing was then placed and has remained in a medical council made up of the president and a member of the examining board and the chief justice of the State.² Provisions have also been made for the examination and licensing of osteopaths and chiropractors. Midwifery is permitted in

Delaware under some semblance of control, but the practice is gradually disappearing. Faith healing is still permitted.

Although Delaware has been among the first states to provide some supervision over the medical profession, it was rather late in taking definite steps to assume public responsibility for the health of the community. It was not until 1879 that a state board of health was created. The need for protective measures over the public health had been recognized earlier in the city of Wilmington where a board of health had been formed in 1797. Outbreaks of malaria and yellow fever had necessitated public action in that city, and the use of the port facilities there had resulted in the naming of port health officers who worked with the local board of health. In a few of the outlying towns, local authority over communal health had been exercised during the first half of the nineteenth century, but no state action was known until 1879. Severe epidemics of typhoid, malaria, yellow fever, and small pox during the nineteenth century had caused the populace to demand the institution of public health officers at the state level. The medical profession itself worked assiduously for the institution of some form of state control to deal with the virulent contagious diseases, but rural apathy, reflected in the legislature, prevented any forthright action until the patience of the northern section of the State reached a breaking point. Part of the reason for calling a constitutional convention in 1896 was that many persons felt that public health legislation should be required in the constitution.

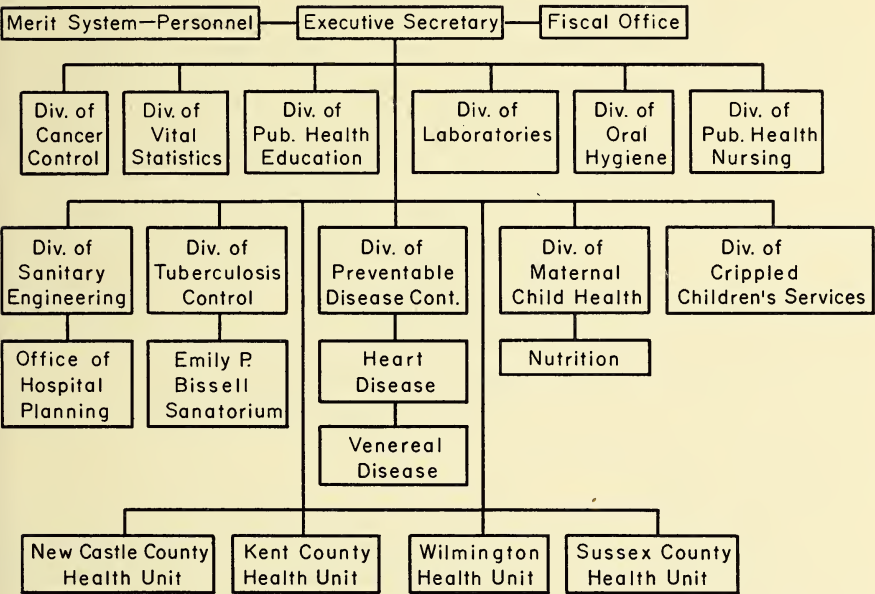
ADMINISTRATIVE ORGANIZATION

Article XII of the Constitution of 1897 states that the General Assembly shall provide for a state board of health. The General Assembly in addition to fulfilling this injunction has established agencies for the administration of mental health.

The State Board of Health

The most important of the administrative agencies charged with enforcement of the health laws is the aforementioned State Board of Health. The present organization consists of eight members appointed by the governor for terms of four years each. Four members are required to be physicians, one of whom shall reside in Wilmington, one in rural New Castle County, one in Kent, and one in Sussex. One member must be a dentist in good standing with the State Dental Society. Three members must be women: one interested in child welfare activities, one interested in the treatment of tuberculosis, and one interested and experienced in business. Not more than five members may come from the same political party. The terms of the board members are staggered. They receive travel expenses but no compensation for their services. The board meets monthly.

The board appoints an executive secretary who is a licensed physician with at least one year's post graduate training in public health or at least five years' experience as a health officer. The executive secretary also serves as state health officer and as registrar of vital statistics. He appoints for each county, subject to the approval of the board, a deputy state health officer who must be trained in public health. The deputies, under the direction of the executive secretary, enforce the rules of the board in their respective counties. All prosecutions instituted by the board come under the direction of the executive secretary. Justices of the peace have jurisdiction of most offenses prosecuted by the board. Appeal is permitted to the superior court.



ORGANIZATION OF STATE BOARD OF HEALTH IN DELAWARE

The State Board of Health has supervision of all matters relating to the preservation of health among the people of the State. It has plenary power respecting quarantine. It may pass regulations to prevent and control the spread of disease and nuisances detrimental to public health; it may provide for sanitary protection of all water supplies that are furnished to and used by the public. In this respect, it cooperates with the Water Pollution Commission of the State by acting as administrative agent for the latter. Mosquito control comes within purview of the State Highway Department, but the State Board of Health may make recommendations to the highway commission respecting eradication of this pest. The health board is charged with the proper collection of garbage and the elimination of sewage; it aids in the regulation of plumbing; it regulates the sanitary con-

ditions in eating places, public camps, and service stations; it has control of the practice of midwifery; and it maintains hygienic conditions in the schools.

The State Department of Health

Technically speaking the State Board of Health conducts the administration of public health. The board, however, does not actually perform the administrative functions. Working under the supervision of the board is a departmental staff of highly trained professional persons who are directly responsible to the executive secretary of the board, who is also the state registrar of vital statistics. The secretary and the departmental staff make up what is popularly (but not officially) referred to as the State Department of Health. This organization is formally arranged in eight major divisions. They are the following: Sanitary Engineering, Preventable Diseases, Cancer Control Laboratories, Public Health Nursing, Maternal and Child Health and Crippled Children's Services, Oral Hygiene, and Public Health Education. In addition to the formal divisional units, there is the Emily P. Bissell Sanatorium for the treatment and care of tubercular patients, which sanatorium is an institution under the direction of the State Board of Health. Its director is responsible to the executive secretary. There is also an Office of Vital Statistics, headed by the registrar of vital statistics. Three deputy public health officers, one serving in each county and in charge of the county health unit, are also under the direction of the executive secretary. They operate as liaison officers for the several divisions of the state health department in the relations of the state unit with the local health agencies.

Local Health Agencies

To supplement the work done by the county health units, which are part of the administrative organization of the State Board of Health, each incorporated town or city in the State may create a local board of health. In those instances where the municipality establishes a board of health, the town council appoints the members and the local board designates the county health officer, who is the state deputy, the chief health officer of the community. In this way close liaison is maintained between the state health organization and the local units. Wilmington retains its own organization, which is completely separate from the state agency.

The state board is authorized to advise local authorities with regard to drainage, ventilation, and sanitary provisions of any public building or place. The state board has general jurisdiction over the public health within all incorporated towns and within one mile of the water supply of such towns. Although the local boards of health are recognized by the constitution and come within the grant of certain legislative powers, they must work in close liaison with the state board. In localities where there

are no local boards or where the local boards do not act to abate a nuisance affecting the public health, the state board may intervene and, through its executive secretary, take the required action. In the event of an epidemic occurring in the State or threatened from without the State, the state board, upon consultation with and approval of the governor, may cause all needful precaution to be taken. Emergency expenditures connected with such action, however, must bear the approval of the governor.³

Critical Problems in Health Administration

The State Board of Health has been caught in countervailing pressures; these emanate from those who demand more State participation in promoting public welfare and from those who hold the reduction of public expenditure as their prime value. The close balance between these opposing pressures has prevented adequate appropriations from being made to the State Board of Health. Perhaps in no other area has the need for more funds been felt to a greater extent than in the field of public health. The attention to public health that seems to be demanded by the vital statistics of the State has not been given. In 1920 the death rate in Delaware was exceeded by only three states.* In 1948 it was reported that the rate stood at 11.3 per 1,000 population while the national average was 10.0 per 1,000. In 1919 the New York Bureau of Municipal Research found that Wilmington, a city then a little over 100,000 persons, boasted of one part-time health officer, two clerks, and six other employees as the total staff of the city health department. It was not until 1945 that the city received a full time health officer.

Part of the reason for continued lack of funds with which to conduct an adequate health program has been the absence of a vociferous and organized interest group supporting the health authorities. There has been no sustained demand for proper expenditures for public health work in the State. The basic reason for public inertia seems to be the great difference between the concepts of health held by the rural and the urban communities. The legislative power rests with the former; therefore, the latter are denied the full measure of state aid that would be Delaware's if they could control the expenditures. This picture is changing, however. In 1953 the legislature increased the usual expenditure for the State Board of Health by almost 40 per cent. It is still not enough, but it is a reflection of an increased attention being brought to bear upon the health needs of the Delaware community.

The history of the state board's activities is replete with restriction and frustration, much of which has come not from impositions of a legal nature but rather from the feeling that it must seek the approbation of local groups

* In the opinion of Governor Townsend cited in his address to the legislature in 1921, sanitary and general health conditions in Delaware were disgraceful. Message of January 4, 1921, in *Collected Messages*.

before embarking upon any comprehensive program of state-wide significance. Although the General Assembly has, within the past two decades, extended the control of the state board over local health problems, that body has been loath to accept the jurisdiction.⁴ The main reason for this failure appears to be the retention of the traditional deference paid to local governing groups. The expansion of the population into the outlying districts of metropolitan Wilmington, where there is little if any local government (except for the over-all supervision of the county levy court)* has presented a demand for vigorous control over public health. The absence of fully coordinated action in such matters as drainage, sewerage, and removal of garbage and debris has permitted the threat of serious health problems to arise in these areas.†

The Constitution of 1897, by recognizing the existence of local boards, has helped abet the difficulties of the state board. These difficulties can also be traced to the fear of the local areas that state authority will crush their prerogatives, even though the exercise of these prerogatives can result in the spread of dangerous conditions throughout the State and beyond its borders.‡

CURRENT MAJOR DISEASE PROBLEMS

Tuberculosis, venereal disease, cancer, heart trouble, and infantile paralysis have not left Delaware untouched. Until recent years tuberculosis rates were extremely high, and during the 1930's the incidence of venereal disease increased. Recently, cancer and heart disease closely followed by poliomyelitis have assumed the forefront of medical attention. Also, the warfare against communicable diseases can never be relaxed; to do so invites the possibility of their resurgence.

Tuberculosis

Prior to 1923 the State Board of Health did not have cognizance of the care and treatment of tuberculosis. The Delaware State Tuberculosis Commission had been formed in 1909 under pressure from the Delaware Anti-Tuberculosis Society. Although this group did much fine work—it developed the Edgewood and Brandywine Sanitoriums, now combined un-

* The levy court is the governing body in a county. It is a group of three elective commissioners. Its chief duties are to levy taxes and to supervise the administration of sanitation and police at county level.

† Serious flood conditions in 1952 in the sprawling area southwest of Wilmington brought angry demands that the state board act or quit. See *Wilmington News*, August 13, 1952. The board finally provided vaccine against typhoid to be administered to the local residents.

‡ The apparent inability of the State Board of Health to move with alacrity in the dangerous situation involving the spread of a polio epidemic in the City of Wilmington in 1946, because of a lack of liaison between city and state health authorities, resulted in the intervention of the United States Public Health Service.

der the name of Emily P. Bissell Sanitorium—there was still a great deal to do in this area.

Owing to constant effort to detect tuberculosis in its early stages, the mortality rate from this disease has been steadily diminishing in Delaware. Today it stands at 15.5 per 100,000 population while in 1949 the figure was 35.1 per 100,000. In 1910 it was 178.9 per 100,000. The Negro population has always been the hardest hit, the present rate for that group being 43.6 per 100,000 whereas the comparable figure for the whites is 10.0 per 100,000.

Venereal Diseases

In Delaware, the control of venereal diseases is vested in state, county and municipal authorities. Any person suspected of such disease may be forced to submit to an examination, and if found infected, may be quarantined or forced to take treatment. Facilities are available to the public to aid in the early detection of this disease. The state board has the power to make rules and regulations necessary for carrying out the examination and possible quarantine and treatment. These regulations have the force of state law and are binding upon the local authorities. It is the local authority, however, which is charged with their enforcement. Free treatment is available to those affected with this type of disease.

In connection with venereal disease control, prenuptial, prenatal serological tests are required. Treatment of the new-born by use of prophylactics is required by law. Physicians, midwives, and other persons attendant upon birth are charged with the enforcement of the latter provision.

As a further aid in preventing venereal diseases the use of contraceptives is permitted in Delaware. Only registered druggists may dispense these products. Oddly enough, although females over sixteen years of age may marry, no contraceptive device may be furnished a person under eighteen years of age. No advertisement of any contraceptive article is permitted.

Cancer

The Division of Cancer Control operates a Mobile Center Detection Clinic. Cancer is the second leading cause of death in the First State as it is in the Nation. The mortality rate of cancer in Delaware was 153.9 per 100,000 population in 1952. Every possible effort is being made to bring the cancer detection services to all communities. The tests are freely administered to all women over the age of twenty-five years. Federal funds have been made available, but again the amount is so small that the State must rely upon its own contributions plus the aid of private organizations engaged in fighting this dread disease.

Heart Disease

Heart disease is the leading cause of death in Delaware. Over 1,500 reported cases in which heart failure of one form or another was the cause of death were recorded by the State Board of Health in 1952, the rate per 100,000 population being 457.1. No provision has been made within the State Department of Health for a special heart staff, the endeavors in this field being confined to educating the public to beware of the symptoms of this disease. Motion picture equipment and films are available, and are used throughout the State. Some Federal funds are allotted but the amount is so small that no full-time program can be developed through this medium.

Infantile Paralysis

Since 1940 there has been a steady increase in the reported cases of poliomyelitis in Delaware. As has been noted, there was a serious epidemic of this disease in Wilmington in 1946. There is no specific division within the state health organization for the care and control of this dread disease, but there is a state hospital, the Doris Memorial Clinic, that treats this disease exclusively. The clinic is under the direction of a competent staff of doctors and nurses. Persons afflicted in any section of the State may come to this clinic for treatment free of charge. Private organizations supply great amounts of financial help and services for combatting this scourge, and recently several thousand public school students received the Salk inoculations aimed at immunizing persons against the ravages of polio. The disease seems to have become increasingly troublesome with the coming of industry and increased population to the State.

Communicable Disease Control

During the first two or three decades of the present century, the war on communicable diseases was of major concern in Delaware, as in other states. The more troublesome of these diseases were diphtheria, scarlet fever, smallpox, whooping cough, and measles. It was not until 1920 that state-wide measures were taken to combat the ravages of these menaces to health. Although quarantine can be ordered by a local board, the state board is the agency that determines whether a particular disease must be reported by a physician. Immunization is conducted under the authority of the state board, and this body makes the various anti-toxins available. If a disease becomes an epidemic in an incorporated town, the local board may close the schools and other public places in the town. If it fails to do so, the state board may issue the order.

MAJOR HEALTH PROGRAMS

The industrialization of Delaware with the concomitant changes in population has pointed up the need for greater attention to the problems of public health. Accordingly, the State Board of Health has instituted over the course of the past decade a series of programs aimed at improving the general health of the community. These include enforcement of food and drug laws, regulation of food processors, control of pollution in the waterways, attention to maternal and child health, establishment of public health nursing, improvement of industrial health and safety, the more efficient recording of vital statistics, and the introduction of a system of licensing convalescent homes and hospitals. Some of these programs come under specific divisions of the state department of health, whereas others are administered by the department acting as a unit.

Food and Drug Law Enforcement

The manufacture and sale of adulterated or misbranded foods and drugs is forbidden by state law. Not all of these laws are enforced by the State Board of Health; some are enforced by one department or agency, some by another. The regulation and control of narcotics, for instance, rests with the State Board of Pharmacy. Dealers selling any food or drug that has been purchased from jobbers or wholesalers as being within the provisions of the state law are subject to prosecution if the food or drug is misbranded or contains prohibited adulterants. The boards of health and of pharmacy enforce these provisions. Oleomargarine is allowed to be made and sold, but penalties are exacted for the misrepresentation of any product as butter. The sale or exchange of any dangerous caustic or corrosive substance not properly branded is forbidden.

Regulation of Food Processors

The State Board of Health has the responsibility for the supervision of certain industries, the products of which have a direct effect upon the health of the community. Bedding manufacturers, makers of ice cream and ice cream products, canneries, poultry processors, manufacturers and sellers of soft drinks, and those engaged in the storage of foods come within the purview of the board. Apart from issuance of license, the action of the board consists of making inspections and of seeing that its regulations are complied with. Because of a general lack of funds to hire a sufficient number of competent inspectors, the inspection phase of the board's activities is not as efficiently conducted as it might be.

In 1946 only 68 per cent of the milk consumed in the State was pasteurized. This situation has been gradually changing, but as yet, the State Board of Health has only very limited facilities for the inspection of dairies

and creameries. The State Board of Agriculture also aids in the inspection of dairies and creameries.

Control of Stream Pollution

Of particular interest to the citizens of Wilmington and the surrounding areas is the law against pollution of streams supplying drinking water. No person is permitted to place any dye-stuffs, drugs, chemicals, or other substance or matter that is noxious into any running water used for public drinking. The law specifically places such an offense within the jurisdiction of the superior court. Prosecution under the act, however, does not involve indictment but may be conducted upon information.⁵ The placing of hog pens or slaughter houses near a running stream so that the offal or excrement therefrom shall escape into the stream is stringently prohibited. The superior court again has jurisdiction in this matter.⁶

Maternal and Child Health

The State Board of Health acts as the dispensing agent for Federal aid received for the purpose of caring for crippled children,⁷ for pre-natal care, and for the health of mothers and infants. Pre- and post-natal clinics are held in five locations throughout the State. Children's clinics are quite numerous, there being twenty-six of them scattered among the three counties. There are, in addition, six crippled children's free clinics and three free clinics for victims of cerebral palsy. The board cooperates with the A. I. du Pont Institute at Nemours in the care of indigent crippled children. Private funds have always been available for this kind of work in Delaware.

Public Health Nursing

The Division of Public Health Nursing works through the local health organizations. Over 35,000 visits were made by the public health nurses in Delaware in 1952. The vast majority of these visits were for maternity cases and for the care of infants and young children. The major portion of the nurses's time is still spent in the clinics, but an increasing amount of their time is now being spent visiting homes.

The Visiting Nurses's Association also performs herculean tasks in maintaining the public health. This organization is not connected with the public health authorities, but works in close cooperation with the state program. The chief duty of these nurses is to aid the local physicians in ancillary health functions such as giving inoculations, caring for newborn children, and caring for convalescents.

Industrial Health and Safety

As Delaware becomes a more industrialized community the need for more attention being paid to working conditions becomes obvious. Most

of the large industrial plants and office operations in the State have their own health and safety programs. Yet there is the need for careful public supervision of the less progressive establishments. As mentioned above there is inspection of certain types of manufacturing to see that those employed therein are free from infection and not a menace to public health. Little has been done to institute worker safety programs in some of the more outlying factories, and greater care could be exercised in the matter of general safety on the farms. No provision is made in the budget of the State Board of Health for any extensive program in industrial health and safety. Fortunately the type of industry now coming into the State appears to have its own safety and health controls. The state should, of course, be on the alert to see that these advantages are maintained.

By law the Industrial Accident Board is directed to inquire into the causes and results of industrial accidents and to make a full report to the General Assembly with recommendations for the improvement of dangerous conditions. The board also dispenses literature to employers concerning proper safety rules. With respect to employment of female workers and minors the State Labor Commission is enjoined to regulate the conditions of such employment to the effect that the health of the workers will not be impaired. The State Board of Health determines the presence of injurious materials in an establishment and advises the Labor Commission. The latter body is charged with the enforcement of its regulations, using the justices of the peace to compel obedience to its rules. The penalties that can be invoked, however, are not heavy, and violations are not always prosecuted.

Vital Statistics

The Executive Secretary of the State Board of Health is also by law the State Registrar of Vital Statistics. The board is enjoined to make careful study of the reports of births and deaths. The board has the power to demand information from various public agencies concerning information needed to maintain an accurate accounting of the numbers of people in the State, their diseases and general condition of health. The state board may also make regulations concerning the notification of disease, and physicians must report to it concerning same. Each year the State Board of Health publishes data concerning marriages, divorces, annulments, adoptions, births, deaths, and incidence of disease, by county and by race. Attempts are also made at giving rates of increase together with total population changes by municipality. Although information of this type is valuable, it is exceedingly difficult to obtain in view of the constant shifting of population, particularly in the northern sections of the State.

Licensing of Convalescent Homes and Hospitals

Sanitoriums, rest homes, boarding and nursing homes operated by pri-

vate organizations must be licensed by the State Board of Health. The board has the right to revoke a license if, upon inspection, it finds its orders and regulations have not been met. The recent increases in establishments of this nature coupled with an inadequate inspection staff make the authority of the board in this area more theoretical than actual.

The Governor Bacon Health Center

In 1945 the state legislature, upon the receipt of title to Fort Du Pont from the Federal government, established a state health and welfare center. It was named in honor of the then governor, Walter W. Bacon, who had been instrumental in obtaining the return of the property to the State and who had been greatly interested in the improvement of the work done for the mentally ill and the physically handicapped.

Although much of the work of the center is directed to the care and treatment of younger people who are seriously maladjusted or mentally ill and who are amenable to modern care and treatment, it is not wholly a mental health institution. There is a department for crippled children; a department for the detention of children awaiting trial in any court of the State that has jurisdiction over juvenile problems; also a department for the care of children waiting assignment to foster homes; a department for epileptics without psychosis; a department for the care of the bedridden aged; and a department for the accommodation of those who are victims of state-wide epidemic or major disaster.

The governing power of the center is vested in the board of trustees of the State Hospital. The law specifically states that the superintendent of the State Hospital shall be in charge of the Center, and all employees of a professional nature at the center shall be directly responsible to him. Thus there is an administrative linkage between the two institutions. Fiscal administration of the two organizations is kept completely separate, however. The legislature makes an appropriation to the center.

The center works in close connection with the State Hospital, and because of the common directorship, there is great facility in the interchange of patients.

MENTAL HEALTH

One aspect of public health that has been conspicuously neglected in many of our states⁸ is the care of the mentally ill. The Delaware story with respect to public concern for the improvement of mental health is one of extremes. Until the 1890's the care of the mentally ill was left to the counties. The county almshouse was in many respects a miniature Bedlam, in which were housed those old and bereft of dollars and/or of sense and those younger who were poor and insane. These county institutions were merely custodial in what might be considered the more sinis-

ter sense of the word. Little attempt was made to separate the amented from the demented. The violently insane were sent to Philadelphia for treatment and incarceration. The almshouses did, however, provide some place for incarcerating those who might otherwise have been thrown into the county jails. This fact is, of course, little justification for the generally poor picture presented by the county almshouses. However, at the end of the nineteenth century the methods used in mental care began to change.

The State Hospital

In 1889 the first step was taken to provide care for the mentally ill on a state-wide basis. In that year, the State Hospital for the Insane was erected at Farnhurst in northern New Castle County. Delaware thus became the first state to assume complete care of mentally ill.⁹ In 1891 the name of the institution was changed to The State Hospital. It was placed under the direction of a board of trustees appointed by the governor for a term of three years. The present board consists of nine persons, three from each county. At no time may all the members appointed from a county be of the same political party.¹⁰ In the first years of its operation, personnel at the hospital was at a bare minimum. Little was done to systematize the administrative arrangements. Slowly, public interest in the institution and the work it was trying to do took hold. With the general improvement in the knowledge of psychiatry during the first quarter of the present century and the entrance into this field of professionally trained persons, more efficient personnel was added to the hospital staff.

The present staff of the hospital consists of superintendent, (the incumbent has been with the institution over thirty years), appointed by the board of trustees, a director of the state mental hygiene clinic, a director of the psychiatric clinic, a state psychiatrist, a criminologist, together with nurses and attendants. The hospital maintains a security building for violent patients. The hospital serves as a place of commitment for use of the courts, and it also serves the general public by receiving and caring for private patients. Physicians practicing in the State may send patients to the psychiatric observation clinic. This type of referral is similar to a commitment because the patient may not leave the hospital without permission for a period of four weeks. The court of chancery has the power to determine whether, in the case of so-called private commitments, there is cause to detain a patient.

The mental hygiene clinic has the duty of examining all school children who are two or more years retarded whenever a request for such examination is made by the superintendent of the school. This provision applies to public and private schools. The clinic also maintains a continuous survey of all feeble-minded in the State. Social service agencies may call upon the clinic for its services. The clinic may apply for the commitment of any person to the State Hospital.

The State Hospital handles all of the criminally insane committed by the courts. The levy court of the county from which the prisoner was committed must pay the cost of maintenance.

Care of the Feeble-minded

Since 1955 the care of the feeble-minded who have been committed to state custody by order of a court or who are voluntarily hospitalized under state supervision is under the jurisdiction of the Board of Trustees of the Delaware State Hospital. Prior to that year the Delaware Commission for the Feeble-minded had charge of such persons. After a prolonged effort on the part of interested citizens to bring the institutional care of the feeble-minded within the purview of the State Hospital, the General Assembly in 1955 abolished the Commission for the Feeble-minded and transferred the control over the facilities and property of the commission to the State Hospital. The superintendent of the State Hospital was made the superintendent of the Delaware Colony at Stockley in Sussex County, the institution for the care of the feeble-minded who have been committed to state care. The name of this institution was changed to the Hospital for the Mentally Retarded. The amalgamation of the Delaware Colony with the State Hospital was a long step forward toward efficient institutional treatment for the feeble-minded in the State. One of the chief reasons for the change in administration of the institution for the feeble-minded was that it had been made to serve as an institution for general rather than specialized care for all the feeble-minded inmates regardless of the medical condition of the patient or of the degree of feeble-mindedness involved. Eventually the Hospital for the Mentally Retarded will be reorganized to permit the transfer of some of its patients to the newer and better equipped Bacon Health Center. The new arrangements will lead to a fuller and more precise treatment of the feeble-minded.

Commitment to the care of the state hospital board is made by the courts in the case of any person who has been arrested and adjudged to be feeble-minded. Any reputable citizen may petition the superior court or the family or juvenile courts to issue a rule to show cause why a certain person should not be committed to the care of the commission. Upon proper investigation, if the court feels that the person is feeble-minded, it may make a commitment. Agreements for commitment may also be entered into between the parents, guardians, or custodians of a feeble-minded person and the board. The costs must be borne by the parents or guardians or custodians if they are able to make payment.

Sterilization of Mental Defectives

If there is a written application to the State Department of Public Welfare from a board or commission having control of any state or county institution that has charge of insane, feeble-minded, or epileptic persons,

the department may appoint two qualified physicians who shall, together with the superintendent of the institution making the application, examine the person named in the request. If the three members decide unanimously that procreation by the person mentioned is inadvisable, then the institution, with the consent of the Department of Public Welfare, may have the individual sterilized. During the past ten years, an average of fifteen persons a year have been sterilized in Delaware under the provisions of the sterilization law.

The mental hygiene clinic of the State Hospital may also institute proceedings eventuating in sterilization of feeble-minded, insane, or epileptic inmates of state or county institutions. In particular, habitual criminals, that is, those convicted of at least three felonies by any court of Delaware, the United States, or of another state, and who are confined may be subjected to an examination by the Mental Hygiene Clinic and if found to be mentally diseased, can be sterilized with the consent of the Department of Public Welfare.

NOTES

¹ Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), II, 742.

² *Revised Code of Delaware* (1953), Title 24, sec. 1737.

³ *Revised Code of Delaware* (1953), Title 16, sec. 129.

⁴ See *Wilmington News*, August 14, 1952, and September 13, 1954.

⁵ *Revised Code of Delaware* (1953), Title 16, sec. 1301.

⁶ *Revised Code of Delaware* (1953), Title 16, 1302.

⁷ See release by Commission on Intergovernmental Affairs, June 13, 1954.

⁸ See Albert Deutsch, *Mentally Ill in America* (Doubleday, Doran, 1937).

⁹ Reed, *op. cit.*, II, 769.

¹⁰ *Revised Code of Delaware* (1953), Title 16, sec. 5101.



CHAPTER 15

Public Welfare

THE ACCEPTANCE by the State of responsibility for meeting problems in the field of public welfare has come slowly in Delaware. Until 1930 the State did not accept full responsibility for the conduct of public welfare administration. Prior to that time the county supervised the care of the needy. Had it not been for the almost complete breakdown of county controls over the problems of relief and general care of the aged, the sick, and the orphaned, the state government probably would not have entered the picture. The collapse of county welfare administration came with the Depression when the tremendous increase in the numbers of people needing public help exceeded the ability of the county machinery to extend help. Private charity, of course, had been of great aid to the county. Even with the advent of the State into the field, private eleemosynary organizations have continued to support welfare work. The county has not, however, been completely eclipsed; the levy courts are still required to meet certain of the expenses incurred in the care of dependent children and the aged poor.

HISTORICAL BACKGROUND

As a backdrop for an understanding of the present function of welfare administration in Delaware, the history of the development of welfare services may be helpful. With the creation of a quasi-autonomous status for Delaware in 1704, many of the poor laws that were then extant continued in operation. Instead of liberalizing the official attitudes toward the indigent, the legislature in the 1730's developed the shameful practice of removing children from the control of poverty-stricken parents and

turning the children out under a system of indenture to work for a living.*

In 1742 the Delaware legislature enacted its own statutes regarding the care of the indigent. The administration of relief in whatever form it was permitted was placed in the counties. The approach to the problems of the aged, the poor, and the sick was different in each county. The costs of the programs were assessed against the county revenues, and the justices and overseers of the counties were enjoined to take "due care" to insure relief of the needy. As the eighteenth century wore on, the levy courts sought to disengage themselves from the original responsibility that the earlier laws had decreed. Dependency upon public aid was made a matter of reproach. Public responsibility was denied, and severe punishments (including banishment) were inflicted for failure on the part of the indigent to obey the dictates of the authorities.¹

Settlement laws passed in the 1740's prevented people destitute of funds from moving into the territory. Fragments of these provisions were in force as late as 1930 in Delaware.² Persons unable to qualify under the settlement acts were escorted beyond the confines of the counties and were kept moving until they left the territory. Each county had officials whose job was to see to it that indigent persons did not enter their jurisdiction, or if they did, to see that they left. The harshness of removals was partly alleviated in 1775, but the laws still provided for removal until well into the nineteenth century. In fact, registration for *all* visitors to the State was required between 1776 and 1795, and anyone harboring a poor person was liable for his maintenance. Responsibility for the protection of the needy found little acceptance by the public or private conscience in the First State until well into the twentieth century.

During the nineteenth century each county had its own set of poor laws. The state statutes provided for a system of trustees of the poor for each county. These boards ran the almshouses in their respective counties, provided what outdoor relief there was, and made regulations for the indenturing of poor children. Appeals from the rulings of the trustees could be taken to the court of general sessions. The trustees also had authority over the boarding out of young children. The orphan's court handled adoption. It was in respect of the supervision of children away from their homes that the State made its first entry into the administration of welfare services. In 1917 the Mother's Pension Program was instituted in Delaware, and a Mother's Pension Commission was given jurisdiction of its administration. The result was the introduction of a system of state-county cooperation for providing amounts necessary to the execution of

* Procedures for the bonding of colored children were in the Statutes until 1915. It is highly probable that indenturing was contrary to the provisions of the 13th Amendment to the Federal Constitution. See Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), II, 814.

this program. Thus began the matching system that is still employed in many of the welfare services in Delaware.

In 1919 the State Board of Charities was created. This agency was assigned the duty of visiting the homes in which children had been placed by other welfare agencies, either private or county,³ and for enforcing the laws respecting the importation of children from out of state who would be a public charge. Meager funds were voted this agency, however, and its supervision remained of necessity cursory.

In 1931 the county almshouses were abolished by law, and the care of the indigent given over to the State. Counties were still required to meet some of the expenses incurred in the care of the needy, but the administration now rested with state agencies. The State Board of Charities continued to supervise the care of dependent children only if they had been placed in institutions or foster homes. The care of the aged was given to the State Old Age Welfare Commission, which, at the same time, had control of the Welfare Home in Smyrna. The costs of the maintenance of the home were split between the State and the counties.

With the elimination of the counties as administrative groups in the field of welfare, the State assumed at least titular responsibility. Unfortunately, however, the state administration was split into three major agencies. There were two reasons for this situation. First, the Federal grants were given specifically, that is, they had to be administered in accordance with administrative provisions outlined by the Federal government. The State Board of Charities (which became the State Board of Welfare in 1943) did not have the statutory right to administer these funds. In particular, the grants-in-aid to mothers in need of help to care for dependent children required an administrative organization that the charities board could not provide under state law. Instead of rearranging this board, the General Assembly permitted the Mother's Pension Commission to handle these grants. Secondly, private interest groups were dedicated to the support of certain phases of welfare, and were afraid that if there was one general board for the handling of all welfare services, their pet projects might get slighted. It was this private parochialism that prevented the formation of a central agency until 1951.

In 1943 the Mother's Pension Commission became the Commission for the Aid to Dependent Children, and in 1945, this agency was joined with the State Board of Welfare, which had succeeded the Charities Board in 1943. The State Old Age Welfare Board remained outside of the system until 1951 when the Department of Public Welfare was created and the old age board abolished. In 1953 the Board of Trustees of the Welfare Home was established.

It was the Depression that finally forced Delaware to abandon its ante-diluvian approach to welfare administration. For a state its size, both in area and population, to contend with the inefficiency of three separate juris-

dictions for the housing of the indigent and the aged poor seems the height of the ridiculous, yet a knowledge of the intense jealousy of local officials against the encroachment of State authority would be explanation enough for the insistence upon county autonomy. The complete breakdown of county care in the face of the onrushing demands arising from the Depression forced the local powers to relinquish their hold.

Once rid of countyism in the area of welfare* the State faced the more formidable attack of the articulate interests bent upon securing the last full measure of public aid for their special welfare programs. The many private boarding homes, which had been receiving public help in their care of orphaned children, looked with suspicion upon the concentration of all welfare services in a central agency. The private charities of some of the more wealthy citizens had been directed to relief of the destitute and the care of the indigent aged.† Strong private support has always existed for certain phases of welfare work.

It is extremely difficult to assess fully the value of the many quasi-public relationships that have sprung up between the agencies and private interest groups in the various fields of public welfare. Undoubtedly, the State has been spared a great deal of expense in the maintenance of several programs because of the philanthropy of a few wealthy individuals. There is, of course, a decided danger in permitting this close liaison. As a result of private largess apathy on the part of the general public may result. The average citizen is apt to forego his duty in seeing to it that public welfare needs are met by public funds when he has the feeling that private charity may be doing part of the job. If private citizens continue to bear a disproportionate share of the cost of maintaining welfare services, some of the basic assumptions respecting administrative responsibility in a democracy will be challenged. On the other hand, the tendency on the part of some elements in the State to be extremely wary of the demand on the part of urban groups for increased help in the field of public assistance leave the welfare agencies with little alternative but to accept private support if they wish to perform their duties. There are steady indications, however, that private support cannot meet the challenge posed by the changing social and economic picture in the State.

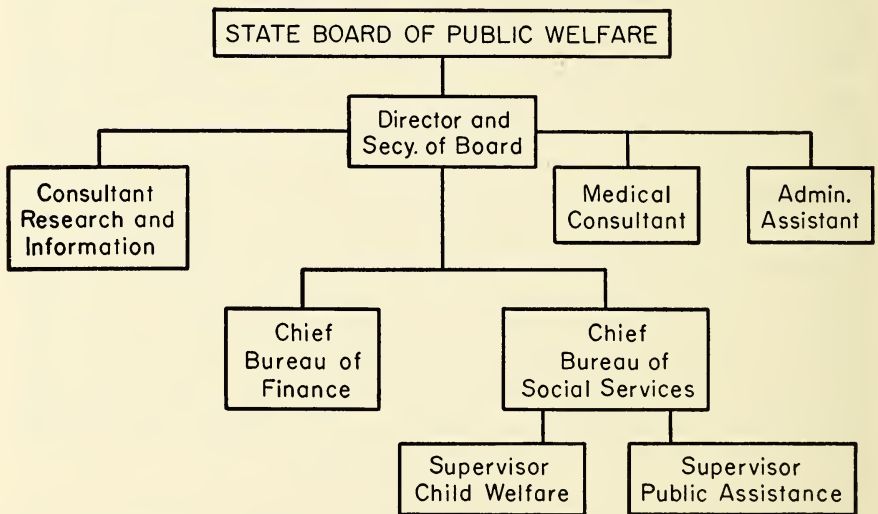
* For a brief period in 1934-35 New Castle County levied an income tax to meet relief needs; the administration of the tax was in the hands of the New Castle County Relief Commission. See *Wilmington Journal-Every-Evening*, April 27, 1934.

† The State Old Age Welfare Commission assumed the responsibilities of the private relief system set up by A. I. du Pont. See Paul Dolan, *State Administration in Delaware* (Baltimore: John Hopkins Press, 1950), p. 101.

ADMINISTRATIVE ORGANIZATION

Department of Public Welfare

It was largely in response to the pressing needs of a rapidly growing society that the General Assembly finally agreed, after a decade of constant pressure, to create an administrative department with extensive jurisdiction in the field of public welfare. Perhaps in no other administrative area has consolidation come so slowly. In 1931 there were twenty-three separate agencies operating welfare services either on a quasi-public or full state or county basis. Today, there are but six including the Parole Board. Consolidation has been difficult because of the factors noted above. The divergent interest groups have prevented the quick amalgamation of all welfare services into one large agency. With the formation of the Delaware Council of Welfare Agencies in 1944, the establishment of a single department became a strong possibility. The following year saw the further amalgamation of certain kindred agencies, and in 1951 the central organization was formed.



ORGANIZATION OF DEPARTMENT OF PUBLIC WELFARE IN DELAWARE

The governing body of the Department of Public Welfare is the State Board of Welfare, composed of twelve members appointed by the governor serving staggered terms of three years. No more than six members may come from one of the major parties, which provision insures bi-partisanship on the board. No requirement exists for county residence among the membership, but custom has been for the governors to give each county representation. This is politically necessary because of the matching of

state and county funds. The tendency has been to name a member of each county levy court to the commission. The members of the board receive no compensation for their services, but are reimbursed for actual expenses incurred in attendance at their meetings. The duties of the welfare department consist of administering all programs of public assistance and the services specifically related to these programs. General relief, child welfare, and aid to the totally disabled (except care of the blind) are within the aegis of the department. All Federal aid that is given to these categories comes to the department; and an accounting is made by the department directly to the Federal government respecting this aid.

The department is divided into two operating divisions: child welfare and public assistance. The child welfare and public assistance divisions are broken down into county offices, one for each of the three counties.⁴ In addition to the operating bureaus, there is a division of business administration, a staff agency concerned with research and information, and a medical consultant. By law, the internal organization of the department rests with the director and the board. By placing responsibility for the administrative organization with the director and the board, the legislature has deviated from its former attitude respecting internal organization in administrative agencies.⁵

Personnel of the Department of Public Welfare are appointed for the most part upon a merit basis. The examinations for these positions are held by a board of three members appointed by the agencies coming within the Federal requirement. (See Chapter 10.) In spite of the merit system, however, it is difficult for the board to keep well-trained employees. Salaries paid by the State are much lower than those paid elsewhere for their services. One third of those employed in the department resigned during the first year of the new department's existence.⁶ Most of these resignations were attributable to low salary.

The director of the Department of Public Welfare is the key to the successful operation of this agency. His is an extremely important and difficult task. Not only does he have the job of coordinating the work of several welfare activities, but he also has the problem of satisfying the demands of very articulate elements in the body politic whose concepts of welfare administration are often at variance. Great effort is required on the part of the director if he is to fulfill the duties assigned him under the laws governing the operation of his department.

Other Agencies

Four other state agencies should be included in a general discussion of welfare administration in Delaware. These are: The Board of Trustees for the State Welfare Home, The Commission on Children and Youth, the Delaware Commission for the Blind, and the State Board of Housing together with the housing authorities.

In 1953 the legislature created the Board of Trustees of the State Welfare Home and Hospital for the Chronically Ill at Smyrna. Between 1951 and 1953 the Welfare Home had been under the jurisdiction of the Department of Public Welfare. Prior to 1951 the State Old Age Welfare Commission had operated this institution. One of the reasons for the re-establishment of a separate board for the running of this facility lay in the feeling held by many persons connected with welfare work that an old persons' home operated by the State should not be associated with the agency engaged in handling general public assistance. The board is composed of four members appointed by the governor for a term of four years. One member must reside in each county and one in the City of Wilmington.

In 1951 the legislature, in response to urgings from many persons interested in working with young people, established the Commission on Children and Youth. The commission consists of twenty persons, each serving a term of four years, appointed by the governor, who also names the chairmen. The members must be citizens of the State who have demonstrated their interest in children and young people. Some of the members must be persons under twenty-five years of age. Others must come from groups interested in education, guidance, business and labor, religion, recreation, physical health, mental health, social welfare, and correction.

One of the older state agencies engaged in the welfare field is the Delaware Commission for the Blind. The privately sponsored program for the training of the blind at the beginning of the twentieth century was taken over by the State in 1909. There was some fear that such action would place the work for the blind in the hands of politicians. As a result the Commission for the Blind, which consists of seven members with each county having representation, was to be appointed by the judges of the superior court. The commission names its own chairman, who acts as executive officer for the agency.

The other agency engaged in relieving conditions inimical to the welfare and happiness of the citizens of the State is the State Board of Housing. This board consists of five members appointed by the governor for staggered terms of four years. No provisions obtain respecting residence or party adherence. Persons named to this agency must have exhibited an interest in slum clearance and in the promotion of better housing.⁷

In addition to providing for a board of housing, the legislature has also arranged for housing authorities which are designated as public corporate bodies authorized to engage in low-rent housing and slum clearance projects. Housing authorities are created by certificate from the State Board of Housing. Six commissioners are named to an authority: two by the governor, two by the major of the most populous town in the area, and two by the resident judge in the county. The authority must be bi-partisan. If the area of operation transcends a county, provision is made for an additional appointment to cover the extended area.

Need Changes in Administrative Organization

The problems involved in the administration of public welfare in Delaware need a great deal of rethinking. Its basic weaknesses are poor organization and inadequate funds. The great lack of coordination among the various state units engaged in welfare services creates a very serious problem. As each welfare agency developed, it attracted unto itself one or more interest groups that tend toward particularism and thus hinder the development of a unified welfare program. Until some measure of comprehensiveness can be achieved in the approach to welfare administration, the maximum use of public moneys in this area will not be reached. Progress can be noted, however, and it may be that with increased demand for an improved welfare program more attention will be given to the administrative arrangements in this field. The establishment of the Department of Public Welfare, for example, was a step in this direction.

Turning now to the question of financial support, it may be noted that less than \$1 million a year is appropriated by the State for the child welfare and public assistance programs. The Public Welfare Department has requested half again as much, but it has had extreme difficulty in getting its demands recognized.

STATE WELFARE SERVICES

The welfare services afforded at the state level in Delaware comprise the following: public assistance, child welfare, services for the blind, and supervision of private homes and hospitals for the care of the indigent aged.

Public Assistance

Two of the programs administered by the Division of Public Assistance in the State Department of Public Welfare are: Old Age Assistance and General Assistance.

Old Age Assistance. For a person to be eligible for assistance on the basis of age he must be sixty-five years of age or older, a citizen of the United States, and have resided in Delaware five years during the nine years immediately preceding his application for assistance. He must have no child or other person capable of and responsible for his support, and he must not have deprived himself of any property or income for the purpose of obtaining assistance from the State. The applicant must be unable to supply the means necessary to enjoy the essentials of life. The maximum amount that can be received under this program is \$75 monthly. The average grant made in 1952-53 was \$39.57. Approximately 1,800 persons received old age assistance in 1953, the monthly caseload averaging 1,705. The State's expenditure per capita for old age assistance is but one-fifth of the national average. Delaware spent \$1.88 per inhabi-

to exert some influence over state officials to bring their thinking around to the needs of youth. Authority has been given the agency to call upon other state organizations to furnish it with information and advice.

In 1953 there was some concern over whether this agency would be continued as it was alleged that insufficient funds for its efficient operation had been appropriated. It may be that the next few years will be a sort of testing time determining whether this agency will receive sufficient appropriation to enable it to perform its functions in the general field of youth and juvenile problems. There is some danger that older state agencies already functioning in this general area might oppose the role of the new agency and lobby to curtail its appropriations.¹⁰

Services for the Blind

As indicated earlier the work on behalf of blind persons has been conducted by the Delaware Commission for the Blind. This agency has cooperated quite closely with several wealthy individuals and private groups who have expressed a keen interest in the welfare of these handicapped people. General supervision of the education, training, and welfare of the blind is exercised by the commission. It appoints instructors and makes available material for use in the instruction. For a person to receive help from the Commission for the Blind he must be totally blind as defined by statute. Any adult blind person may make application to the commission to receive instruction and training. The parents or guardians of blind children must inform the Commission that they have such children in their charge, and it is then the duty of the commission to see that proper instruction is given. If such children are placed in institutions outside the State, it is the duty of the commission to make periodic inspection of these institutions and report their condition to the governor.

The work of the Commission for the Blind has merited the continued attention of the legislature and interested citizens. It has performed its arduous tasks in a most satisfactory manner. When it is remembered that the work of the commission is supervised by a lay board, the members of which have given of their time and private funds unstintingly, there is little wonder for the general recognition and approbation. Although the number of persons coming within the aegis of this agency is not great, the amount of energy needed in order to set up a worthwhile instructional program for blind persons regardless of the number served, places a heavy and constant burden upon the board members. The State has been fortunate in having had at its disposal the services of the men and women it has; a group that has made up the Delaware Commission for the Blind since its inception.*

* The present chairman, Dr. Francis Cummings, whose work with the blind has been exceptional is held in high regard throughout the State.

Homes for the Aged

Since 1935 the State has maintained an old persons' home at Smyrna in Kent County. Any person having a legal residence in the State who has been unable to obtain employment or who is unable to work and who has no permanent place of abode with no relatives to support him may be admitted. The Board of Trustees for the home have the right to make the rules and regulations governing admittance and occupancy. The costs are borne by the counties in proportion to the number of inmates coming from each county, and the State reimburses each county half of the expenses which the county has incurred. Deficits are covered by the state treasury.

The Problems of the Aged

Among the myriad problems confronting a person in his declining years there are two that cause the most general concern. The first is, does the individual have enough means to meet the necessary expenses of living. The second concerns the question of how does an individual spend his time when he is old. The laws of the State and of the Federal Government have tried to provide a modicum of monetary support so that no old person will be completely penniless. Little has been done by government to provide the stimulus that is needed to bring meaning to life, particularly as the waning years are reached.

Perhaps it is not the duty of public authority to see that opportunity for creative activity is provided when the end of life approaches, yet the old and disabled often have little power of their own to create a situation in which their inner forces can find expression. It is in this respect that much thought has been given by both public and private groups in Delaware to the problems of the aged. Conferences and workshops are organized for the purpose of making it possible for those in their latter years to regain their touch with the forces of creativeness, which give meaning to a man's life whatever his age. Those who work with the old know this as one of the problems of age, and their effort is bent to providing some proper solution for it. To this effect greater cooperation between public agencies and private organizations is needed. Delaware has not made much progress in meeting the challenge of its aged citizens.

FEDERAL SOCIAL SECURITY PROGRAMS IN DELAWARE

In addition to participating in the Old Age Assistance Program, which operates under the direction of the State government aided by Federal funds, Delawareans also participate in the Old Age Survivors Insurance administered by the Federal government through its Department of Health, Education, and Welfare. Three other direct welfare services receive Fed-

eral help. These are: Aid to Dependent Children, Aid to the Blind, and Aid to the Permanently and Totally Disabled.

Old Age Pensions (OASI)

The Federal Social Security Act passed in 1935 made provision for persons over sixty-five years of age and their spouses and, in case of death their survivors, to receive an insurance payment based on the income of the wage-earner during the years of his employment. Over 105,000 persons are now under Social Security in Delaware. 15,000 receive checks from the Federal government under the Old Age and Survivors Insurance. Approximately 2,000 persons a year are being added to these rolls. Out of the 1,800 persons receiving old age assistance from the State, some 250 are also receiving partial benefits under the OASI program. Of the children aided under the Aid to Dependent Children program operating at State level, some 150 receive payments under OASI. The average check in 1953 was in the amount of \$56 in all categories under OASI.

Aid to Dependent Children

In 1917 the Mother's Pension Fund was established in Delaware to facilitate aiding of mothers who had dependent children and were without visible means of support for their upbringing. Early Federal acts provided assistance to the State authorities in the development of this program. At present the program is administered by the Public Assistance Division of the State Department of Public Welfare and is called the Aid to Dependent Children Service. Assistance is rendered after investigation to children who lack adequate financial support because the father is unable to supply it. The child must be a "needy child" under sixteen years of age or under eighteen if found by the department to be regularly attending school. The child must be residing with a relative or guardian. The state law makes specific provision that any liberalization of the Federal statute governing aid in such cases will automatically apply in Delaware.

The amount paid to any family having such children is determined by the number of children up to eight who are in such family and are under the program. The minimum for a single child is \$75 monthly, the maximum that can be paid for eight children or over is \$150 monthly. The average grant in Delaware in 1952 was \$86.45, and the average number of cases handled monthly in that year was 737. The Federal government contributes 65 per cent of the aid furnished, the State 20 per cent, and the counties 15 per cent. Delaware spent \$2.13 per capita on this program in 1952-53, which is about two thirds of the national average. Approximately twenty-two children out of every 1,000 under eighteen years of age in the State's population were helped in the period 1952-53. The average for the Nation was thirty out of every 1,000.

Aid to the Blind

The administration of state aid in the form of cash payments to needy blind persons made under prevailing Federal grants handled by the Delaware Commission for the Blind. Assistance is granted on the condition that the applicant:

1. is over twenty-one years of age
2. has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health
3. is not an inmate of any public institution at the time of receipt of assistance
4. has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance at any time within two years prior to his application
5. is not receiving old age assistance under the state program
6. is not publicly soliciting alms
7. has been a resident of the State since losing his sight or a resident one year immediately preceding application.

Application is made to the commission, and after investigation the commission decides the question of eligibility. An applicant must be examined by an ophthalmologist, physician skilled in diseases of the eye, or an optometrist. The amount of assistance to be given is determined by the commission, which takes into account the resources available to the individual. In order to provide an incentive to rehabilitation and self-support, the commission may disregard the earnings of a blind individual to the extent of \$50 per month and 50 per cent over this amount provided the waiver is within the provision of the Federal Social Security Act. No blind person may receive more than \$85 monthly from the program. Certain supplementary services are made available to an individual in need of treatment concerning his blindness if he is otherwise qualified under this program. Additional sums for nursing and medical care are also available at the discretion of the commission. The average monthly payment in 1953 was \$60, the Federal government pays up to \$35 of the grant. All grants in excess of the latter figure are met by the State. The average number receiving grants in 1953 was 215.

The Commission for the Blind also administers the Vocational Rehabilitation Service for blind persons. At present there are some fifty cases in which training is given to prepare persons for assumption of wage earning. Placement for these people is done by the commission and careful post-placement surveillance is practiced by the commission. Approximately 75 per cent of the costs of this program are met by the Federal government.

In many states the needy aged blind are transferred to public assistance rolls, but in Delaware these cases are handled by the Commission for the

Blind. Most of the persons in the financial aid program are old people, whereas the majority of those using the Rehabilitation Service are younger and capable of making their own living once they have the proper training.

Aid to the Disabled

Using grants made by the Federal government under the provisions of the Social Security Act, Delaware has developed a program for giving assistance to those totally and permanently disabled who are unable to provide for themselves because of their physical disability. The disability must be certified by a physician.¹¹ Many persons now under the General Assistance Program (relief) could be treated as disabled persons if proper and adequate staffing were made available to the Department of Public Welfare. Inadequate staffing has been a serious deterrent to the efficiency of the program for the totally disabled. "Since Federal funds are not available for General Assistance, the State [would] save money by the transfer of eligible persons to the Disabled category."¹²

Under the present Aid to the Disabled the Federal government meets 55 per cent of the assistance, the State paying 45 per cent. The total amount spent for this program in Delaware in 1952-53 was \$88,324. The average grant in this period was \$52.53 a month, the national average being \$48.62. Delaware's grant includes medical expenses, which in many states are paid separately. There were approximately 130 persons receiving monthly benefits in 1952-53. Some very helpful service is rendered the disabled through the work of the Welfare Home in Smyrna, an instance of inter-agency cooperation at the state level. From the standpoint of per capita expenditure for the disabled, however, Delaware was extremely low—\$.17 being the figure here, while the national average was \$.69.

HOUSING

The State Board of Housing is engaged in relieving conditions inimical to the welfare and happiness of the citizens of the State, insofar as this can be accomplished by providing adequate shelter.

The duties of the board are chiefly of an advisory and investigative nature. It has no power to direct the elimination of slums or to prevent the erection of certain type of dwellings. It does not of itself have the right to engage in community planning, but can and does cooperate with local groups both public and private in the effort to obtain better housing. Much of the space devoted to the housing board in the statutes is directed to the control of so-called "limited dividend housing companies."* It is interesting to note the length to which the laws are concerned with the

* A limited dividend housing company is one that is closely supervised by the State Board of Housing. Rentals are fixed by the board and earning of the corporation are limited to 8 percent return on the original investment.

regulation of these companies inasmuch as few, if any, of them have ever existed in Delaware. Practically all of the building done in the State is conducted by private individuals or corporations with no limit whatsoever placed upon the profits they can make from such operations.

The powers of the board in respect of investigation of housing projects are somewhat illusory because practically no funds have ever been granted it to conduct incisive and complete investigations of housing needs.

In addition to the State Board of Housing, the legislature has authorized the establishment of housing authorities to aid in the improvement of housing conditions. The authorities established by early 1953 were two: one in the Wilmington area, and the other in Dover. These authorities are permitted to enter into agreements with the Federal government for the purpose of borrowing funds. Condemnation procedures are vested under the power of eminent domain in the authority. All real property acquired, owned, leased, rented or operated by an authority is subject to the zoning laws of the locality in which the property is situated. Unless the Federal government supervises an authority, it is subject to the supervision of the State Board of Housing. In order to effect dissolution, an authority must request permission from this board.

In each community it is possible for the governing authorities to permit a slum clearance and redevelopment authority to draft plans for the improvement of a slum or blighted area, but regional authorities may be set up by concurrence among several conjoining communities. The authority here named works with funds obtained from the Federal government, the state, the county, or municipality, or from private grants. Redevelopment projects carried out under the aegis of such an authority must have the concurrence of the local governments in the area. Most of the work done by a slum clearance and redevelopment authority depends upon Federal funds. Delaware has been slow to avail itself of the opportunities afforded for the improvement of general housing conditions in the State.

NOTES

¹ Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), I, 427.

² *Ibid.*

³ See *Annual Report of the State Board of Charities* (Dover, 1920), p. 9.

⁴ See *Report of the Department of Public Welfare for 1952* (Dover, 1953), p. 4.

⁵ Paul Dolan, *State Administration in Delaware* (Baltimore: John Hopkins Press, 1950), p. 79.

⁶ *Wilmington News*, April 8, 1953.

⁷ *Revised Code of Delaware* (1953), Title 31, sec. 4102.

⁸ *Report of the Department of Public Welfare, op. cit.*, p. 13.

⁹ *Revised Code of Delaware* (1953), Title 31, ch. 9.

¹⁰ *Report of Commission on Children and Youth, 1951-52* (Dover, 1953), p. 23.

¹¹ *Report of the State Department of Public Welfare, op. cit.*, p. 11.

¹² *Ibid.*, p. 7.



CHAPTER 16

Agriculture

HISTORICAL BACKGROUND

UNTIL 1920 agriculture was the basic industry of Delaware. Although the northern portions of the State had by that year long been centers of manufacturing and commercial activity, farming was the economic core of society during the first 150 years of statehood. This fact has left an indelible stamp upon the patterns of thought of Delaware's citizens and has been reflected in their politics and government. Since 1920 there has been a steady movement toward industrialism. This trend, which originated in New Castle County, has spread slowly to the other two counties so that today, they are rapidly acquiring an industrial economy. The change from a solid farming community to one in which the marts of trade and the factory have become significant has been slow to reach the cultural roots of Delaware.

The average farm in Delaware is now slightly more than 100 acres. There has been a steady though small drop in the number of farms operated. From slightly over 10,000 in the 1900's, the number has decreased to 7,448 in 1950, (see Table 16). Tenancy has tended to diminish so that today the majority of the farms are operator-owned either outright or with a mortgage. In 1949 only 20.8 per cent of the farms were held by tenants. Total farm acreage has declined in Delaware, particularly in New Castle County. In 1900, 84.7 per cent of the total land area was in farms. Today, farmland constitutes less than 70 per cent. Farm population has likewise diminished. Between 1940 and 1950, there has been a decrease of nearly 25 per cent in farm population in the First State. In 1940, according to the Census, 45,974 persons were on the farms, while in 1950 the number was down to 34,772. In 1940, 17.3 per cent of the popula-

tion of the State was living on farms, while in 1950 the figure was 10.9 per cent. The trend is definitely away from agriculture in Delaware.

TABLE 16
NUMBER AND AVERAGE SIZE OF FARMS IN DELAWARE, 1910-1950

<i>Year</i>	<i>Number</i>	<i>Average Size (Acres)</i>
1950	7,448	114.3
1940	8,994	99.6
1930	9,707	92.8
1920	10,140	93.1
1910	10,836	95.9

The land of Delaware has a fairly high degree of fertility, particularly in the northern county. It is capable of producing the usual garden vegetables of the Middle Atlantic coastal region. The principal paying crops in Delaware have varied from time to time. In the first half of the nineteenth century hay, wheat, oats, and barley held the lead; in the second half, peaches and apples were the mainstays; while today lima beans, tomatoes, and cantaloupes are among the chief crops. Dairy farming and the raising of poultry have been of great importance. The state has been forced to adapt itself to constantly changing conditions of crop culture and markets. This fact has been important to the development of agricultural administration at the state level.

TABLE 17
PERCENTAGE OF DELAWARE'S TOTAL LAND AREA IN FARMS, 1900-1950

<i>Year</i>	<i>Total Farm Acreage</i>	<i>Per Cent</i>
1900	1,066,228	84.7
1910	1,038,866	82.6
1920	944,511	75.1
1930	900,815	71.6
1940	895,507	70.7
1950	851,291	67.8

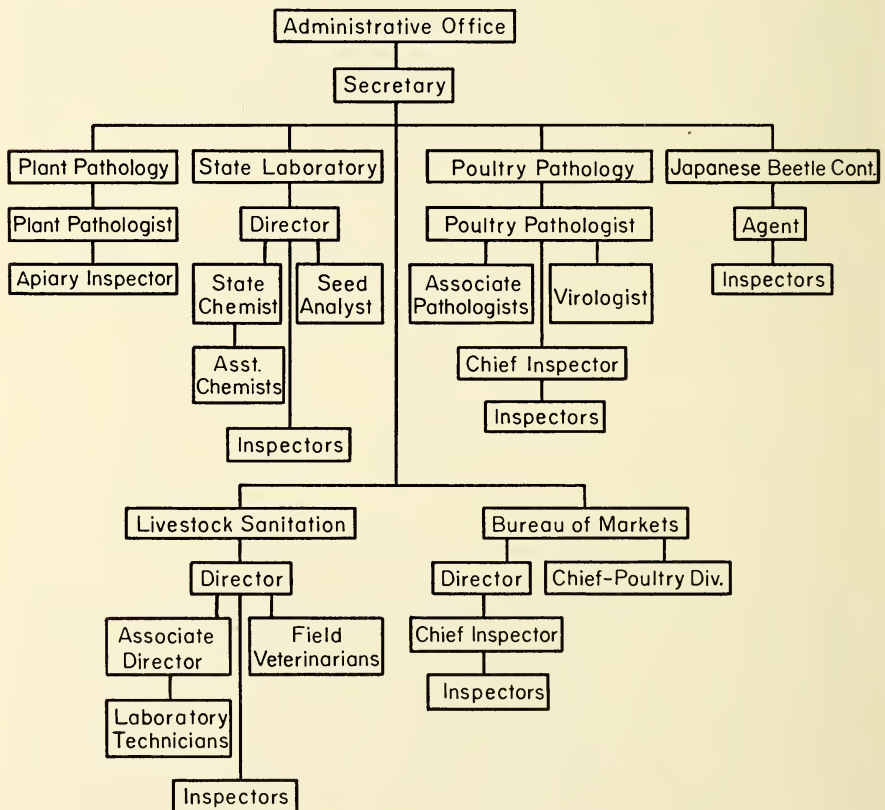
ADMINISTRATIVE ORGANIZATION

Although there has been steady diminution of the strength of agriculture in the economy of the State, there has been an almost steady increase within recent years in the number of public agencies engaged in the administrative organization concerned with this activity. The proliferation of administrative agencies dealing with agrarian pursuits obtaining during the latter part of the nineteenth century was drastically curtailed during the 1920's when the State Board of Agriculture became the locus of ad-

ministrative effort. However, the last decade has witnessed a resurgence of administrative expansion. Today, in addition to the State Board of Agriculture, there are three other state agencies directly engaged in agricultural administration. They are: the State Soil Conservation Commission, the State Poultry Commission, and the State Apple Commission.

State Board of Agriculture

In 1897 the constitutional convention discussed the need for a state board of agriculture. Before that time the State had done little in the administration of agriculture. The first resolution of the convention regarding the establishment of the executive departments called for the creation of a department of agriculture.¹ Although the belief in *laissez faire* was quite evident among the delegates, there was a feeling that the farmers were in need of some administrative aid to promote mutual understanding of farm problems among the farmers themselves.² One of these problems had to do with shipping of farm produce. An attempt had been made early in the convention to set up a railroad commission or to give power



ORGANIZATION OF STATE BOARD OF AGRICULTURE IN DELAWARE

to an agricultural board to control railroad rates. Although this move was defeated, it was evident that some members would have restricted the freedom of enterprise on the part of the railroad companies in order to give the farmer what was considered by the farmers' representatives to be equitable rates.³ The farm lobby was in constant attendance at the convention, and the agricultural pressure groups saw to it that the convention brought in an article guaranteeing, at least for a trial period, the existence of a state board of agriculture.

Article XI of the Constitution of 1897 created a state board of agriculture consisting of three persons (one from each county) appointed by the governor.⁴ The legislature is empowered to abolish the board if it sees fit to do so. Power was given the board to abate and prevent, by regulation, all contagious and infectious diseases of fruit trees, plants, vegetables, cereals, horses, cattle, and other farm animals. The board was also authorized to promote immigration into the State on the part of settlers who would be useful and industrious.

In furtherance of the constitutional injunction, the General Assembly in 1897 established the State Board of Agriculture. Actually, the board heads an agency whose administrative organization has reached such complexity that it is beyond the personal management of the board members. The board is the titular head of the agricultural agency, but its actual operation rests with a secretary, who is named by the board. Owing to the close tie-in with Federal authorities and with the county agents the board finds itself following policies determined in part by others.

The regulatory powers of the agricultural agency are used to control plant and animal diseases. The agency also inspects seeds and feeds, liming materials, and fertilizers shipped into and out of the State in order to insure the maintenance of standards. The agency has the power to regulate the marketing of milk, cream, and other milk products. It is in respect of this control that it concerns itself with the proper operation of dairies and creameries. In addition to its services to the dairy farmer, the State Board of Agriculture distributes anti-hog cholera serum and examines farms wherever domestic animals are quartered. Inspection of imports of cattle from beyond the State is in its hands. The State Chemist, who serves under the State Board of Agriculture, is charged with the examination of all agricultural products suspected of being diseased.

Soil Conservation Commission

Soil conservation has been the most recent of the programs introduced in the general conservation program of the State. Although drainage laws were on the statute books before the turn of the century, there had been no systematic drainage administration prior to 1943. In that year the State Soil Conservation Commission, consisting of the secretary of the State Board of Agriculture, the dean of the College of Agriculture at the

University of Delaware, and four farmers, was formed by statute. Each county is represented by a farmer member, the extra farmer member being representative of the entire state.⁵

State Poultry Commission

The State Poultry Commission is charged with the inspection and certification of poultry flocks and hatcheries, an administrative service highly important to Delaware in view of the phenomenal growth of the broiler industry in recent years. This commission consists of eight members appointed by the governor for four year terms. Five of these persons must be members of poultrymen's associations interested in the promotion of the industry. The director of the Agricultural Experiment Station of the University of Delaware acts as the secretary of the commission. The poultry commission was established in response to strong interest group demand that the State take a firm hand in helping to maintain the broiler industry at the level it had reached in the late 1940's. The commission is enjoined to cooperate with the State Board of Agriculture in controlling the diseases found among the flocks. Licenses for poultry dealers are issued by the State Board of Agriculture.

State Apple Commission

In 1949 the General Assembly created the State Apple Commission. The establishment was the direct result of the several apple growers' associations in the State demanding that some promotion of their product be made under state aegis. The governor appoints the three members of the commission from a list of apple growers which list is supplied by the executive committee of the Delaware Apple Grower's Association. No more than two members of the commission may come from the same political party. Each appointee must be a citizen of the State and a commercial apple producer in the State. The term of office is three years. One member serves as chairman and one as secretary.

The commission plans and conducts campaigns of education, advertising, and promotion and research for the purpose of increasing the demand for and the consumption of Delaware apples. Interstate cooperation is sanctioned. The work of the commission is supported by a nominal tax levied upon apples produced and packaged in the State. Grading standards for the sale and packaging of apples are determined by the State Board of Agriculture, and the enforcement of rules for the marketing of apples is under the control of the State Board of Agriculture. The State Apple Commission is basically a promotional agency.

Farm Organizations

Of all the areas in which the government functions agricultural adminis-

tration is the one most closely associated with organized private groups. The recent history of agriculture in the United States consists to a tremendous extent of the role played by the Grange, the American Farm Bureau Federation, and other organizations of slightly lesser influence. In Delaware, the Grange and the Farm Bureau are the important agrarian pressure groups; actually few agricultural bills get by the legislature without approval of one or both of these two farm bodies. In addition to these organizations, there is a series of cooperatives, feed dealers' associations, poultrymen's associations, apple growers' associations, and various agricultural "societies" whose names bespeak their local origin. One of these societies, the Peninsula Horticultural Society, in the Del-Mar-Va region is among the oldest in the State. It was organized in 1886.

The membership of the State Grange is about 2,200, while that of the Farm Bureau, which has only family membership, is over 1,000. This latter figure is exceptional in view of the fact that the bureau was not organized in Delaware until lately. The influence of both organizations is much greater, however, than the membership figures would indicate. Both the Grange and the Farm Bureau serve as social organizations in addition to their economic activities. Much of rural Delaware's fun and frolic is found through the local Grange organizations. The Grange plays an important role in the development of attitudes held by the rural population. Community service forms an exceedingly large part of the farm organizations' activities. The Farm Bureau has gone as far as the spraying of suburbanites' lawns and to dispensing of free information to any person in the state who is interested in developing so-called "victory" gardens.

The Grange and the Farm Bureau, together with other farm organizations, perform services that the State Board of Agriculture with its limited resources cannot accomplish. Without the help of these organizations, the quick and regular distribution of marketing information would not be possible. They also aid in combatting crop pests and diseases among cattle and poultry. The work of these private agencies is a reflection of the prevailing pattern of the quasi-public administrative action that obtains at the state level in Delaware.

A Period of Transition

In view of the number of commissions connected with the promotion of the agricultural interests of the State, it can be readily concluded that the General Assembly has spent much effort upon this single industry. It remains to be seen whether within the course of the next decade there will be a continuance of this interest on the part of the lawmakers. In the light of the changes that are occurring within the economy of the State, it may be that the political action will be directed in channels other than agricultural ones. However, the United States Department of Agriculture has in

many respects become the real champion of the farmer, and it is in the Federal authority rather than the State's that the Delaware agriculturalist places his faith today.

Once the legislature ceases to be preoccupied with rural interests, however, it will be a fair sign that basic alterations in the economic fabric of the First State have taken place.*

Already less attention is being directed toward agricultural pursuits if a mere count of the statutes having to do with farm problems is any criterion. This legislative change is but a reflection of what is fast becoming general knowledge, namely, that Delaware is no longer predominantly an agrarian community. Slowly the rural mores are being replaced by the complicated attitudes and concepts held by urban, industrialized folk. The law and the lawmakers will lag behind these sociological modifications, but eventually even the law will change, and Delaware will no longer be the rural retreat just off the main road of industry. At long last, Delaware will have come of age and assumed its role in the industrial process, which is the mark of twentieth century America.

ANIMAL INDUSTRY

The importance of animal husbandry to the farmers of the State is attested by the fact that the *Revised Code of Delaware* (1953) devotes two entire chapters to its discussion.⁶ The State Board of Agriculture is enjoined to protect the health of the domestic animals of the State and to determine and "employ the more efficient and practical means for the prevention, suppression, control or eradication of dangerous, contagious or infectious diseases among the domestic animals." Quarantine and other measures relating to the movement of animals and their products are prescribed. Dairying and poultry raising are the chief activities in the field of animal husbandry brought under the surveillance of the state authorities. Although there has been a steady rise in the amount of pork and beef raised in Delaware, these products do not compete in rate of output with milk and broilers.

Dairying

One of the leading agricultural industries in Delaware is dairying. Kent

* One odd reminder of the extensiveness of agriculture's role in the governmental process in Delaware is to be noted in the process of fence viewing. In order to maintain proper boundaries between adjoining farms, the State law admits the need of good fences. Serving as arbiters and sole judges of whether a fence between two lands is adequate and of the question who shall pay for the maintenance thereof, a body of fence viewers is provided for each hundred. These viewers are appointed by the superior court of the county. They number from five to eight for each hundred, a majority having power to render a decision. The Revised Code is not clear as to whether the levy court or the property owners involved shall pay the costs incurred in the viewing of fences.

County is the center of this thriving industry, which by 1950 had reached the first rank of producers of high farm income in the State. Delaware has long exported milk and butter, but within recent years the export of dairy products has undergone a phenomenal increase.

Fluid milk did not, however, represent an important item in the statewide economy until after the Depression. Beginning in 1933, the increase in the production of milk has been steady. In that year, less than 80 million pounds were produced. In 1945 the figure had reached over 140 million pounds. By 1953 it was close to 200 million pounds. Today, fluid milk furnishes over 10 per cent of the total cash farm income.⁷

Poultry

The most significant event in the history of Delaware agriculture, however, has been the introduction of the broiler. The raising of broilers has become one of the foremost industries of the State. The importance of broiler raising to the State may be seen in the fact that in 1945 Delaware had the sixth highest net income per farm in the entire country. Sussex County, the center of the broiler industry, boasted the second highest cash farm income for counties east of the Mississippi River. In New Castle County in 1950, the broilers accounted for 9 per cent of the total cash farm income for that county; in Kent, 21 per cent, and in Sussex, 90 per cent.* The increases in cash farm income during the period 1941-45 were phenomenal, and the greatest factor in this advance was the broiler.⁸

Although the broiler industry undoubtedly has placed Delaware agriculture in a stable condition, there are signs that the peak has been reached in the benefits derived from this item. Production continued to increase after a dip in 1947, but the comparative value of broilers to the rest of the farm products has begun to diminish. In 1950 it stood at 63.7 per cent of the cash income of the State, whereas in 1945 it was 68.7 per cent. In 1953 it was 53.3 per cent. Although percentage figures do not in themselves indicate a real loss in production, the fact is that the broiler industry of Delaware "appears to be losing ground in contrast to poultry production records in other parts of the United States." In 1941 Delaware produced 28 per cent of the United States broiler production; in 1948, it produced 15 per cent.

There is evidence that serious inroads have been made upon Delaware's preeminence in this field. The Midwest and Georgia, both with certain advantages over the First State in the way of cheaper feed costs, have been steadily over-reaching Delaware and thus reducing the margin of profit to Delaware producers.⁹ The rise in demand for frozen poultry has curtailed the advantage held by Delaware in respect of accessibility to markets. To

* New Castle County farm income has been approximately 12 per cent of total state farm income for the period 1941-51; Kent's has been 16 per cent, and Sussex, 72 per cent.

meet this latest turn in the marketing of broilers there has been a trend in the direction of building processing plants, in which the broilers are made ready for shipment. One of the immediate results of this trend is the introduction of manufacturing techniques into the rural downstate areas. The broiler industry has in many ways become a manufacturing occupation employing industrial workers who are not at all imbued with the agricultural mind-set of the dirt farmer.

Included in the poultry industry is of course, the production of eggs. This product has provided between 4 and 5 per cent of the total cash farm income over the period 1945-1953. Egg production is distributed throughout the State as follows: 50 per cent in Sussex, 50 per cent in Kent and New Castle Counties. There has been a decided increase in the raising and sale of turkeys in the State. Today the turkey raising industry provides close to 2 per cent of the total cash farm income.

Combatting Animal Diseases

The inspection of cattle to see that they are free of disease is one of the main tasks of the State Board of Agriculture. The work is under the control of the Livestock Sanitation Department of the agency. Tests are given for bovine tuberculosis, mastitis, and brucellosis. If herds are certified the State assumes the costs of the tests. Hog cholera serum is distributed free of charge to the owners of hogs. Heavy fines are imposed for violations of the regulations of the State Board of Agriculture respecting the care and treatment of diseased animals.

Whenever 75 per cent of the cattle owners in any county, hundred, or district have tested herds of cattle and are willing to cooperate with the State Board of Agriculture to the extent of making such area a "modified accredited area", and are willing to comply with the State and Federal regulations to keep their own herds clean, then the state board may declare the remaining herds under quarantine "so that no cattle or products may be removed from such premises," until the owners of quarantined cattle comply with the provisions of the board.

In respect of the eradication of diseases among the important broiler flocks in the State the agricultural agencies test the birds for pullorum, and certification is made of flocks that are free from this disease. If rules and regulations of the State Board of Agriculture are not met, the board may revoke the certification. The board establishes rules for the vaccination of poultry where necessary for the amelioration or eradication of diseases damaging to the poultry industry.

Feed Inspection

Feed coming within the inspectional powers of the State Board of Agriculture includes all materials used for feeding animals except whole seeds or grains; unmixed meals made of corn, wheat, rye, barley, oats, and other

grains; and whole hays, straws, and silage. All persons offering for sale or distribution in the State any brand of commercial feed must have printed on the package a plainly printed statement containing the net weight, the brand, the address of the manufacturer of the contents, the minimum percentage of crude protein, fat, and of certain chemicals essential for normal nutrition, and the maximum percentage of crude fiber in the feed. All sellers must make application for registration, and if the application meets the requirement of the state board it issues a certificate of registration. There is a slight fee for this service. The board has the power to enter on premises of feed companies selling materials in the State for purposes of inspection of their products. If any rules of the board respecting the manufacture and sale of feeds are breached, action at law by the attorney general of the State may be taken.

PLANT INDUSTRY

Delaware has never been a one-crop economy, but from time to time there has been a tendency to favor one or two crops over others. Wheat and barley have held their own over the past century, but beyond planting the usual grasses such as alfalfa and timothy and the raising of corn, Delaware has shown a disposition to experiment with cash crops. Peaches were the first cash crop to gain the attention of enterprising farmers during the early part of the nineteenth century. Peaches were started first in New Castle County but gradually spread southward until late in the century their center was in Sussex. The disease known as the "yellows" hit the State's peach crop shortly after the Civil War, and by 1890, it had so depleted the orchards that peach culture became a thing of the past as far as a steady money crop was concerned. Strawberries and then apples took hold, but each in turn fell either to labor problems or to competition from other states. Tomatoes became important to the farming communities with the turn of the century, and today, along with lima beans, they are a source of good income. Cantaloupes bring a good return on investment, but marketing is a problem and consequently, they have never caught the fancy of the average farmer.

One of the constant difficulties that confronted the early agriculturist in Delaware, particularly in the southern counties, was the lack of prime land. Only in northern New Castle was the land rich and ready for the grower. Much of the lower territory was boggy or too sandy for truck culture. Except for the center strip of the State, the lower counties possessed sub-marginal holdings from which it was often said a man did not reap what he had sown.¹⁰

Beginning at about the middle of the nineteenth century, intensive fertilizing was introduced. Crop rotation began to be practiced with a degree of vigor unknown in Delaware until that time, and the result was al-

most immediate improvement in the yields. Part of the problem prior to the post-bellum period was the lack of good transportation. In 1829 the Chesapeake and Delaware Canal had been opened, and it furnished some means of getting goods from inland New Castle County to market, but downstate was still isolated. It was the coming of the railroad that opened up opportunities for the lower counties. This factor together with improved soil techniques brought decided improvement to agriculture throughout the State. It was the new means of transportation that helped shift the peach culture to the south. Drainage and swamp clearance extended the arable land so that by the beginning of the present era, Delaware became known as a garden state.

Plant Pathology

In line with general practice among states in which there is concentration of agricultural activity Delaware has taken steps to abate, prevent, and eradicate plant diseases. In the state agricultural agency there is a plant pathology department under the direction of a plant pathologist. The plant pathology department in the School of Agriculture at the University of Delaware cooperates with the State Board of Agriculture's plant pathologist in making tests of plants to determine the presence of disease.

Once disease has been detected the State Board of Agriculture will begin treatment, billing the owner of the plants or trees affected for the costs of such treatment. The board may set up quarantine of an infected area and prevent the movement of crops out of it. Violations of the board's regulations are prosecuted before justices of the peace with appeal to the superior court.

Truck Gardening

Total cash farm income in Delaware in 1953 was \$103,758,000. Of this amount truck crops such as tomatoes, lima bean, string beans, cabbage, and so forth, brought in \$8,299,000, or slightly under 8 per cent. This is the third highest source of farm income in Delaware, the first being broilers, the second fluid milk. Truck crops "have come back fast."¹¹ As the result of increasing competition in the broiler and fluid milk fields, Sussex and Kent Counties are now turning more and more to truck crops; New Castle still lags behind the two lower counties and there is little reason to suspect that this county will not long be a contributor to agricultural income, except for fluid milk and other dairy products. Sussex, particularly, is tending toward general farming along with continuing its great interest in the raising of broilers.

Seed Inspection

The State Board of Agriculture inspects and tests agricultural and vegetable seeds, and it makes rules and regulations governing the methods of

sampling, inspecting, analysis, and testing. Every container of agricultural or vegetable seed that is offered for sale within the State for sowing purposes must have on it the name, kind, and lot number for identification of the seed. The origin of the seed must be made known, and the percentage of weed seed mixed with it must be specified. Also information concerning the date the seed was tested must be given. No person may sell seed unless the test for germination has been completed. The board's agents may enter upon premises in order to have access to seeds covered by the regulations, and if it finds a violation, a stop order may be issued enforceable at law. The attorney general of the state is charged with instituting proceedings in such cases. After judgment by the court in any case of this nature, the Board may publish information pertinent to the issuance of the judgment and disseminate this information to the farmers.

Inspection of Fertilizers and Liming Materials

Along with the power to inspect seed the State Board of Agriculture has the power to regulate the sale of commercial fertilizers. Any person who offers fertilizer for sale in the State without affixing an accurate statement as to the contents of same is subject to a severe fine. All persons offering fertilizer for sale must file with the secretary of the State Board of Agriculture the above mentioned statement. The board has the power to collect samples of commercial fertilizers and submit them to the state chemist for analysis. The agents of the board have the right of access to obtain such samples.

Every manufacturer or importer of lime and similar products for use in agriculture in the State must apply annually for a license to sell same. Samples of the materials to be sold must be submitted to the State Board of Agriculture at the time of application for license. The fee is \$.05 on each ton sold. If the manufacturer or seller is new to the business he pays an initial fee of \$5.00 for each brand to be sold. The state board also has the power to stop any and all vehicles delivering liming materials and have such weighed at authorized weighing stations in order to determine the correctness of the quantity being sold.

Nursery Inspection

The Board of Agriculture examines and inspects at least once each year all nurseries of trees, vines, and shrubs in the State. The board inspects trees, plants, shrubs, and vines, generally known as nursery stock, coming into its jurisdiction for the purposes of determining whether such stock is free from insect and fungous diseases. Certificates showing that inspection has been favorable must accompany all stock moving into the State. Certification is obtained through the State Board of Agriculture.

Apiary Inspection

Within recent years beekeeping has become an important industry in Delaware. The General Assembly in 1947 provided for a state apiarist and bee inspectors.¹² The State Board of Agriculture is authorized to appoint a competent state apiarist, who works under the supervision of the board. The apiarist appoints one or more competent assistants who are known as State bee inspectors. These individuals are usually named on the recommendation of the local beekeepers or association of beekeepers. All known apiaries are inspected once each year by the state apiarist or his assistants. These officials have the right of entrance upon private property for purposes of inspection. If an apiary is found to be affected with disease, then the bees within it must be eradicated upon order of the State apiarist.

AGRICULTURAL MARKETING SERVICES

Accessibility to large urban markets in New York, Philadelphia, and Baltimore has provided Delaware farmers with ready outlets for their products. The new Chesapeake Bay Bridge connecting the eastern and western shores of Maryland has given additional marketing areas to the lower counties of Delaware, including access to the District of Columbia market.

The production of broilers has been concentrated in Sussex County, fluid milk in Kent, with truck farming spread in differing proportions throughout each of the three counties. Thus each county presents a different agricultural problem from that furnished by the others. The multiplicity of products is reflected in the several laws calling for the marketing of milk, vegetables, fruits, and eggs which have been enacted over the past thirty years by the General Assembly.¹³

Actual administration of marketing of farm products is in the hands of the Bureau of Markets, which is a division of the state agricultural agency. The bureau is charged with advising farmers of the economical and efficient distribution of food products at fair prices. It inspects and determines the grade and condition of farm produce both at the collecting and receiving centers, and it makes rules for the handling, grading, packing, storage, and sale of all food products within the State unless Federal law covers these processes. The bureau also operates a cost analysis service, which is available to any farmer in the State without charge. It also may act as mediator or arbitrator, when invited, in any controversy or issue that arises between producers and distributors and that which affects the interest of the consumer.¹⁴

Working in cooperation with the Bureau of Markets is the State Chemist who is appointed by and is directly responsible to the board. He is in

charge of the standard weights and measures used in the measurement of agricultural products. He is also charged with making analyses of food-stuffs including meats when the quality of these foods is questioned. He assists in the health regulations as they pertain to the maintenance of purity in foods.

Marketing and Crop Reporting

The bulk of marketing and crop information used by the Delaware farmer is supplied by the United States Department of Agriculture through the Bureau of Markets of the State Board of Agriculture. There is close tie-in between the Federal and state authorities in this respect. The daily reports of farm prices are distributed by the State Board. Use is made of daily radio programs in addition to printed reports for the purpose of getting the information to the farmers. The Agricultural Department of Economics in the School of Agriculture at the University of Delaware furnishes mimeographed circulars showing cash farm income by counties and commodities in Delaware. Bulletins showing cash income are issued periodically by the State Board of Agriculture and the Agricultural Extension Service.

Inspection and Grading

In addition to the programs that have been discussed, there are other agricultural inspection programs that are supervised by the Bureau of Markets working in conjunction with the Federal Department of Agriculture. There is no inspection of meat raised in the State unless the cattle-raiser desires Federal inspection. All out-of-state meat is inspected by the Meat Inspection Service in the Bureau of Animal Husbandry in the United States Department of Agriculture. Poultry inspection has been discussed above. Apples are packed and graded under Federal-State certification programs. Many other fruits and vegetables also are inspected by Federal-state employees operating under the joint program. All such inspections are voluntary.

Eggs and cantaloupes are subjected to compulsory inspection under the state law. Meat and poultry plants are subject to inspection under the aegis of the State Board of Health, but the only real sanction that the state officials have over farmers who breach the code set up by the grading service is withdrawal of the service and the state inspectional marketing from the products. Marketing services are offered only to those who submit to inspection. It is only upon complaint from a buyer that knowledge of the breach of the code is gained by the state authorities.

Milk processing has always been a problem of major concern in Delaware. Agriculturists and the state agencies involved in the sanitary programs associated with dairying have been successful in introducing proper milking and processing methods so that today over three quarters of the

state's dairymen use milking machines. Care in the use of milking machinery is being taken by more and more of the dairymen, one of the chief reasons for this is the insistence by the larger milk buyers that standards of cleanliness be observed.

The need for state intervention in the handling of agricultural products was manifest before the close of the nineteenth century, although prior to the revision of the Constitution in 1897, much of this work was in the hands of private agricultural associations. Within recent years state inspection and grading have come to be indispensable to the proper marketing of farm products, and although the voluntary aspects of the task still obtain, more and more farmers are coming to see the need for careful supervision over the sale of farm products.

MISCELLANEOUS ACTIVITIES

The work of the State Board of Agriculture, the State Apple Commission, and the Delaware Poultry Commission, is directly or indirectly involved in the improvement of the conditions of farm labor and the conditions of the markets in which the results of farm labor are made available to the public. In addition to the facilities offered by those groups there are others whose aim is to promote the welfare of the agrarian population. Three of these facilities are: (1) the fairs and agricultural exhibitions that are held from time to time in the State, (2) agricultural research and education, and (3) soil conservation.

Fairs and Agricultural Exhibitions

One of the oldest agricultural institutions in the State is the Kent-Sussex Fair, held at Harrington for one week in July every year. \$12,500 was appropriated out of the state treasury in 1953 for the "Kent and Sussex County Fair, Incorporated," a corporation of the State of Delaware, for each year of the 1953-55 biennium. Payments of this nature have been traditional. The appropriation is restricted to the payment of prizes for "meritorious achievements in agriculture, stock, and poultry raising, and in works of manual training and the domestic arts." The appropriations have been in the nature of supplementary appropriation acts and are referred to as grants-in-aid.

The fair is well attended. Gala events are held to attract and hold the crowd's attention. Governor's Day brings out the throngs particularly in an election year, for at that time the candidates for state office make a political rally of the proceedings, and to the downstate Delawareans the affair becomes a sort of test at the hustings.

From time to time local agricultural exhibitions are held in the downstate towns to which the people of the countryside come to view the products of local farmers which are exhibited sometimes for prizes and some-

times not. Farm youth also vie in these events displaying their handicraft for the admiration of their neighbors. Often the Grange holds events in which the work of agriculturists is featured.

Agricultural Research and Education

Apart from the use made by farmers in the State of research done at Federal level there are several agencies operating at state level that devote much of their time to research. The Faculty of the School of Agriculture at the university spends about two thirds of its time in the general area of research, although some of this work is done in actually helping farmers to grow better crops and would, therefore, be associated with a direct service. The Agricultural Extension Service also gives over a good deal of its effort to research not only in actual crop production but also in domestic arts. Federal funds are employed by both the School of Agriculture and the Extension Service in their research programs. The State Board of Agriculture also affords some research activity particularly in poultry raising and processing. The limited staff of this agency has not permitted it to expand its facilities.

As one would expect in a state with an agrarian background there is considerable emphasis placed upon agricultural education in Delaware. The public schools in the rural areas employ, the Federal grant-in-aid program, instructors to teach the rural youth the modern technics of soil culture, dairying, and kindred pursuits. Associated with the public schools and operating under the provisions of the Smith-Hughes Act are the Future Farmers of America and the New Farmers of America. The first organization is for white boys and the latter for colored boys. The work of these groups is in the field of formal vocational education with respect to agriculture. Both organizations have wide representation in the First State.

Another organization for the education of the rural youth are the 4-H Clubs. These clubs comprise both boys and girls between ten and eighteen years of age. The work is done under the direction of the Agricultural Extension Service, and a portion of the costs are supplied under provisions of the Smith-Lever Act. Here the instruction is highly informal, the meetings take place in the homes of the members. Artcraft and handiwork are stressed, and emphasis is placed upon the moral standards of the young people.

The School of Agriculture in the University of Delaware is the center of agricultural education in the State. Its staff consists of highly trained and competent instructors and research workers and its reputation is state-wide. The help to the farmers rendered by the School of Agriculture and the Agricultural Extension Service is greatly appreciated. Without the aid of these organizations it would be well nigh impossible to maintain the high standards reached by Delaware agriculture. Courses in agriculture are also offered by the Delaware State College located in Dover.

Soil Conservation

In 1943 the General Assembly cooperating with the United States Department of Agriculture enacted the Soil Conservation Act whereby a Soil Conservation Commission was established. Federal and state soil conservation agencies join in forming policies and general programs for the conservation of the soil and soil resources including drainage and erosion control in the various conservation districts that the state authority establishes. The Soil Conservation Commission works locally with the farmers in a given area within a county and upon the request of the farmers it creates a district. The district, set up for the purpose of soil conservation, is governed by a board consisting of the chairman of the county levy court, the county agricultural agent, and four landowners.

In addition to the Soil Conservation Commission and the local district boards, the law provides for boards of ditch commissioners for each county within the State. The governor appoints three ditch commissioners from each county for a term of three years. Tax ditches (which are the drainage areas in which the taxes are levied) are set up upon request by the owners of lands in need of drainage. First, a petition must be made to the superior court of the county by one or more landowners seeking the formation of a tax ditch. This petition is filed through the board of supervisors of the county soil conservation district in which the proposed ditch is to be located. Investigation of the feasibility of the drainage is made by the board of ditch commissioners for the county. This board, consisting of three persons, is appointed by the governor for a term of three years. The board of ditch commissioners holds a hearing among the affected landowners and conducts a referendum. If the referendum is favorable, the board makes its report, containing its own opinion as to the need for the ditch, to the superior court. The court holds a final hearing, and if it finds need for drainage, an order is issued establishing a tax ditch.

Each tax ditch is governed by a board of managers elected by the taxables in the area affected by the ditch. The board may levy taxes based on benefits and may borrow, within statutory limits, with the approval of the taxables.

Soil conservation has only recently become an item of major concern to the farmers of the State. As competition in farm products increases the need for better soil and the intensification of agriculture mounts. It is in this respect that the soil conservation agencies, working at both state and Federal level, and the local drainage arrangements assume significance in the agricultural economy. Among the services offered by the Soil Conservation Commission are instruction in crop rotation, planting, and the use of fertilizers. As greater attention is paid to care of the soil the yield of the acreage under till has steadily increased so that today Delaware

agriculture reflects an efficiency unknown twenty-five years ago. In this respect alone the cost of soil conservation has been more than justified.

NOTES

¹ *Debates in Constitutional Convention in Delaware, 1897* (Dover, 1897), I, 80.

² *Ibid.*, XIV, 8613 ff.

³ *Ibid.*, I, 418.

⁴ There was a movement to have the board act as delegates for the farm organizations. This was defeated. *Ibid.*, V, 3453.

⁵ 44 *Delaware Laws* 212, (1943).

⁶ *Revised Code of Delaware* (1953), Title 3, ch. 71, p. 73.

⁷ *Report of the Department of Agricultural Economics*, University of Delaware Agricultural Experiment Station, Number 1, September, 1954.

⁸ For a brief but cogent account of the rapid rise in cash income for farms in Delaware, see the *Delaware State News*, August 14, 1947.

⁹ See editorial in the *Wilmington News*, May 30, 1953.

¹⁰ *Report of the United States Commissioner of Patents, 1852* (Washington D. C., 1853), page 108.

¹¹ *Wilmington News*, October 1, 1954.

¹² *Revised Code of Delaware* (1953), Title 3, sec. 7501.

¹³ *Revised Code of Delaware* (1953), Title 3, chs. 31, 33, 35, 37, 39, 55.

¹⁴ *Revised Code of Delaware* (1953), Title 3, sec. 302. In addition to the Bureau of Markets, there is the State Apple Commission, which is engaged in promoting the sale of apples that have been grown in the State.



CHAPTER 17

Conservation

THE CONSERVATION of natural resources has been of long standing interest to the First State. Yet until quite recently the broad aspects of an integrated conservation program gained little consideration. Publicly supervised conservation consisted for the most part of laws to protect game and fish and to protect the State's limited forest resources. Recently programs for soil conservation and for the prevention of water pollution have added materially to the fight against waste and destruction of the State's natural wealth.

Soil conservation in a state the size of Delaware is of vital importance because of the need to use all available land. As early as 1829 some private effort was made to drain the innumerable marshes that line the eastern shore along the Delaware. In a famous decision of the United States Supreme Court, Chief Justice Marshall upheld the right of the State to enact legislation permitting the damming of a creek to drain the adjacent marshland even though such action interfered with the stream's navigability.¹ Yet during the whole of the nineteenth century little governmental activity occurred respecting the steady diminution of fish and game, which by the turn of the century had reached sufficient proportions to give even the most lethargic citizens cause for alarm. Before state action was undertaken, however, serious inroads upon the stock of small game, fish, and shellfish had been made. Today, Delaware is slowly recovering from the ravages of unbridled and stupid exploitation.

Denudation of the small forest reserve and the erosion of the soil in the lower counties reached such proportions by the 1920's that large numbers of citizens became sufficiently aroused to force public action.

ADMINISTRATIVE ORGANIZATION

Five general categories are administered by the State's conservation services. The five areas are: protection of forests, protection of wild life, conservation of soil (which has been discussed under agriculture), control over public lands and waters, and maintenance of recreation facilities such as state parks. Although no effort has been made to integrate these services into a general scheme of administration, much progress has been made in each field. Perhaps a state department of natural resources or of conservation will come about, but administrative change in Delaware has always been slow.

The commission system is used to direct the administration of statutes dealing with conservation. There are seven commissions all of which are plural-membered, appointed by the governor, and representative of counties and of professional groups interested in a particular phase of conservation. Some commissioners receive a small annual stipend, others serve with reimbursement for expenses only. All agencies are severely limited in their administrative organization; in most cases the director or executive secretary being the only administrative officer. Several of the commissions have no extra personnel for the routine supervisory functions, thus leaving the members themselves responsible for actual administrative surveillance. General administrative reorganization, proposed in 1950² would have set up a department of agriculture and conservation, which would have included the present Water Pollution Commission, the State Board of Agriculture, the State Forestry Commission, the Game and Fish Commission, the collectors of the oyster revenue on the Broadkill and Mispillion Rivers, the State Park Commission, the Soil Conservation Commission and the agency in charge of shell fisheries. To aid the director of the proposed department a board of conservation was to be established capable of making rules and regulations for his guidance in matters involving the taking of fish, game, and shellfish, the use of state forests and parks, the control of animal and plant disease, and the creation of soil conservation districts. This entire proposal was defeated without vote by being left to wither in committee after introduction in the legislature. Opposition to being absorbed in a large department on the part of administrators of the present commissions helped to prevent the proposed reorganization.

STATE FOREST ADMINISTRATION

Forest land is not extensive in Delaware; less than 25 per cent of a total land area of 1,962 square miles is wooded. The only large (2,753 acres)

state preserve is the Redden Forest in Sussex County. Several smaller acreages have become state forests, but they are of little consequence except for the use made of them as experimental stations in the study of trees. The total acreage of state forests in Delaware is 4,600 or less than 1 per cent of the total land acreage in the State. Timber and brush abound in Sussex in 1950 over 46 per cent of the county was made up of land unworked agriculturally because of trees and shrubs. Lesser amounts of timber and brush are to be found in New Castle and Kent Counties.

The State Forestry Department was created in 1927. The administration of this agency is under the direction of a commission composed of four members, appointed by the governor, who also serves in ex officio capacity. The term of office is eight years, and no salary is received for service on this commission. The commission appoints a state forester, who must be professionally trained and experienced. He is the administrative head of the department, and he has direction of all matters pertaining to forestry and woodlands within the State. State forest wardens and other officers are named by the state forester to aid him in performing his duties.

Forest Protection

The State Forestry Department is the agency of the State that cooperates with the United States Government under provisions of Federal forestry laws. Its chief function is to prevent fires and to protect the wooded areas of the State from destruction. The department aids the officials of the counties and municipalities in preventing and suppressing forest fires. It also conducts an instructional and educational program designed to help prevent the waste of the forest reserves.

All game wardens and state police officers are also forest wardens, and they cooperate with the regularly appointed forest wardens in keeping watch over the timber lands in the State. The investigation of every fire occurring within a forested area rests with the wardens under the supervision of the Forestry Department. Serious fines and severe terms of imprisonment can be meted out to persons engaged in wilfully causing fires in the woodlands. In addition to precautions taken in respect of forest fires, the laws provide for penalties to attach to anyone defacing, removing, or otherwise destroying trees or shrubs not on the person's own land.

Reforestation

The Forestry Department procures and distributes tree seeds and seedlings for the purpose of establishing windbreaks and forest growth on the denuded or nonforested lands within the State. Reforesting parks and timber tracts and treeless lands also may be undertaken by the department, the difficulty here is that little funds are made available for this purpose. Certain acreages of state forest lands may be leased to any citi-

zen or private agency for the purpose of cutting and selling the timber under the directives of the department.

The establishment of commercial forest plantations of five acres or more by any land owner in the State is provided for in the statutes, and upon proper application, all state and local taxes on such land will be rescinded. Periodic inspections of such acreages are made by the state forester or his officers. Commercial forest plantations are lands used to grow trees for sale, usually for the pulp industry.

All state forest tracts are game sanctuaries. In this respect the Forestry Department cooperates with the Game and Fish Commission and with the Federal government in the protection and propagation of wildlife.

FISH, GAME, AND WILDLIFE ADMINISTRATION

The geographic situation of Delaware originally provided the State with an abundance of natural wildlife. Bordered by the wide expanse of the Delaware Bay and the open sea, the State contained an abundance of fish and other seafood. The wooded, rural areas that made up most of the inland acreage, furnished an abundant and steady supply of small game. Delaware during the nineteenth and early twentieth centuries was a sportsman's paradise. Increased use of and a lack of care for the game and fish resources led to a steady diminution of these forms of natural wealth. Lucrative businesses in shellfisheries, in fur trade, and in the providing of recreational facilities for visiting vacationers began to decline because of this depletion in game and fish.

To forestall the continuance of these inroads and to bring the State back to the level of supply enjoyed during the early years of statehood, the General Assembly created state agencies to protect and replenish the resources of the State.

Game and Fish Commission

Since 1911, with the establishment of the Game and Fish Commission, the State has assumed responsibility for the protection of wildlife within its boundaries. The commission consists three members appointed by the governor, one to come from each of the three counties, no more than two of whom are to be members of the same political party. The term is six years, and one member is appointed in each odd-numbered year. There is a small stipend of \$300 annually paid for the services of the commissioners, and they receive the expenses incurred in the performance of their duties.

The board employs a chief game warden, who serves as the executive director of the agency, and other officers whose general duties are to protect the wildlife of the State under rules promulgated by the board. The specific duties assigned by the legislature to the commissions include:

1. providing fish nursery ponds and game farms
2. providing lands or waters suitable for upland game, waterfowl, fish, or fur-bearing animal propagation and protection
3. providing public hunting, fishing or other recreational grounds or waters to be used as areas for these purposes
4. extending and consolidating lands, marshes, or waters suitable for hunting and fishing by exchange of other lands and waters
5. stocking lands and waters of the State with wildlife

The State of Delaware, through this agency, cooperates with the Federal government in the wildlife restoration projects of the latter. All funds derived from the issuance of yearly licenses issued by the board are deposited with the state treasurer, and \$1.00 of each license fee is earmarked, under the provisions of the Dingell-Johnson Act³ for the purpose of securing the Federal matching grants under this act. Licenses are restricted to citizens of the United States, but out-of-state citizen's license fee is considerably higher than that charged a resident. The President of the United States is issued a complimentary license to hunt and fish within the State's jurisdiction.

The many estuaries that abound in Delaware, together with adjacent marshes have made the State attractive to migratory fowl. Delaware lies on the eastern "flyway" used by these birds. In 1937 the United States Biological Survey purchased some 12,000 acres of marsh and upland on the Delaware Bay near the town of Leipsic, and here was set up the Bombay Hook Migratory Wild Fowl Preserve. This preserve has aided tremendously in the replenishment of ducks, geese, and pheasants so that today this form of wildlife abounds in lower Delaware.⁴

To aid in the protection of wildlife, the governor appoints a boat inspector, whose chief duty is to inspect all boats of any type or size used for carrying fishing parties for hire in the waters of the Delaware Bay, the Delaware River, that part of the Atlantic Ocean under the jurisdiction of the State, and in all other bays, lakes, and waterways within the State. The boat inspector works closely with the Game and Fish Commission in the execution of his duties.

Recently the Marine Biology Laboratory of the University of Delaware has been established and is currently undertaking a thorough study of the fish habits and habitats in the estuarial waters of the State. The costs of operating this laboratory are insignificant when compared with the value of the information it provides for sportsmen and commercial fisheries using the waters.

The State has entered an interstate compact with some fifteen Atlantic seacoast states for the purpose of promoting the "better utilization of the fisheries, marine, shell, and anadromous, of the Atlantic seaboard." The Fish and Wildlife Service of the Federal Department of the Interior acts as the primary research agency of the Atlantic States Marine Fisheries Com-

mission, which was formed as the result of this compact. Three members from Delaware serve on this commission.

Protection of the inland waters from overzealous fishermen and from careless industries using the streams as dumping grounds for their waste products has become the joint task of the Game and Fish Commission and the Water Pollution Commission. The former agency has undertaken an energetic and extensive program for the restocking of the State's inland waters. The anti-pollution campaign is aimed at seeing that the restocking is not in vain. The Game and Fish Commission has enlisted the aid of private groups interested in conservation of wildlife in this effort to clean up the waterways. Already much success has been obtained through this joint effort in working with industries that are situated along some of the picturesque creeks and waterways of Delaware.

The Commission of Shell Fisheries

During the latter part of the nineteenth century the oyster, lobster, and crabbing grounds of Delaware were noted throughout the East. However, lack of attention, introduction of commercial fisheries without regulation, and general contamination of the Delaware River by industry brought near extinction to the State's shell-fishery.

Since the early 1900's efforts have been made to regulate the breeding and taking of shellfish. It was not until 1943 that the General Assembly recognized the need for drastic control over this natural resource if its elimination was not to occur. In that year the Delaware Commission of Shell Fisheries was created consisting of five members appointed by the governor. Two of these persons must be actively engaged in the shellfish industry, and the fifth member is the collector of oyster revenue. No more than three members may come from the same political party.

This commission is charged with the protection of shellfish in the waters of the State. It may "operate, cultivate, and replenish" the oyster or clam grounds or beds in the waters within the jurisdiction of Delaware.⁵ Whenever there is no natural growth of oysters or clams within the waters owned by the State the commission may lease sections to residents of the State for the purpose of planting oysters and clams and "catching same by means of dredge, tongs, or rakes." Rentals are nominal. Fees are charged of anyone taking oysters from any of the waters in the State. Part of the moneys obtained through fees is spent for the restocking of oysters in the Broadkill River, an estuary of the Delaware Bay.

To aid in the enforcement of the oyster tax the legislature has established the office of collector of oyster revenue, who is appointed by the governor for the term of two years. To aid in the policing of the oyster beds, four oyster wardens serve as officers. These officers use a watchboat to help them in their duties, and the costs of operating this craft rest with the Commission of Shell Fisheries. The direction of the vessel is

under the collector of the oyster revenue. Control over crabbing rests with the Game and Fish Commission.⁶

PUBLIC LANDS AND WATERS

The smallness in area of the State of Delaware forbids the possibility of any extensive acreage in public lands. Practically every square mile is held in full or in part under private ownership. State forests, as noted above, are not large and their number is few. State parks are only beginning to appear, and here again the size of these recreational areas will of necessity be extremely limited.

Delaware has few lakes, and of those that exist over half are man-made. All are extremely small. Streams are rather numerous, and the small estuaries leading in from bay and ocean comprise fairly extensive areas particularly in Sussex County, where Rehoboth Bay and Indian River Bay provide good commercial and sportsmen fishing opportunities.

In earlier days the shallow creeks opening off the Delaware River and Bay afforded access to market for the farmers and orchardmen who inhabited the back reaches of the lower counties. Today few of these streams are navigable. The Broadkill, the Mispillion, the Murderkill, and the Leipsic Rivers have unusual names but little substance in way of being rivers; in fact the constant problems of dredging to enable shallow draft vessels to get above the mouths of these creeks make their future use as commercial waterways highly problematical.

Public Lands Management

The State Highway Department is charged with the survey of public lands in the State that have not been surveyed, plotted, and recorded. The department supervises the sale of any material or product that may be grown upon any public land (except for timber from State forests). The land itself may, be sold by the State acting through the department.

One of the oddities of the State Code is that it permits the Highway Department to lease "for the exclusive right of mining, exploring, and operating for the producing therefrom, oil, and gas," although such minerals have not to the writer's knowledge ever been found in any appreciable quantity in the State.⁷

Soil erosion along the coast line has been a serious problem in Delaware, particularly in the lower end of the State. The Highway Department has effected a program for protecting the beaches by filling in of sand and the erection of groins and jetties. Access roads and lanes have been constructed so that the beaches can be used by the public. Camping is permitted in the beach areas subject to reasonable regulations by the local jurisdictions and the Highway Department.

Water Resources Management

Being a maritime state, Delaware has had need for fairly comprehensive regulation of the use of its waterways, the coastal areas, and the harbors and facilities affording access to the navigable waters of river, bay, and ocean. Several agencies both at state and interstate levels have been formed to aid in this regulation.

The Delaware Waterfront Commission and the Board of Harbor Commissioners of the City of Wilmington are agencies primarily engaged in advisory capacity to inform the legislature concerning ways and means of preventing erosion along the waterways and of protecting the waterfront areas against the ravages of the elements and other causes of destruction. Three members make up the state commission, and one of the three-membered city board of commissioners serves on the state agency.

Delaware is a party to the Delaware River Basin Compact, one of the more famous interstate compacts. This compact creates the Interstate Commission on Delaware (INCODEL) River Basin. The work of this group will be discussed in a later chapter dealing with interstate relations, but it is important to point out here that this agency has been of decided benefit in protecting the waters of the lower Delaware River and Bay. The State Board of Health is enjoined to cooperate with INCODEL, carrying into effect the proposals, made under the provisions of the compact, within the territorial limits of the State.

Although Delaware, being basically lowland near the sea, has had little difficulty in obtaining sufficient surface water for its needs, it has been evident to many thinking people throughout the State that maintenance of a reasonable quantity and quality of water for public purposes should be a governmental task. Accordingly, the General Assembly, in 1949, established the State Water Pollution Commission. This agency is composed of ten members, seven of whom serve in ex officio capacity being also members of the Game and Fish Commission, the Shell Fisheries Commission, city and county engineers, and executive secretary of the State Board of Health. Three members, one from each county, are representative of industry and are appointed by the governor. The State Board of Health is the administrative agent for the Water Pollution Commission, and one of the representatives of the former agency serves as the executive officer of the latter.

The duties of the Water Pollution Commission are:

1. to exercise general supervision over the administration and enforcement of laws relating to pollution of the water of the State
2. to investigate problems connected with pollution
3. to conduct experiments to prevent the dumping of sewage and waste into streams and waterways
4. to issue rules for the control of pollution

5. to enter into agreements with responsible authorities in other states, with approval of the governor, relative to methods for the control of pollution which entails interstate cooperation
6. to hold hearings and issue orders concerning violations of its rules and regulations. (The right of appeal in such cases rests with the superior court.)

The effectiveness of the Commission's work depends on close cooperation between the municipalities and the state authorities. So far excellent results have been achieved in the populous New Castle County area where the erection of new homes and the expansion of industry have created great need for water and sewerage. The New Castle County Trunk Sewer Project has aided immeasurably in relieving the pressures on the local sewage controls. New sources of water for dwellings and plants are constantly being developed, so that at present the northern part of the State is keeping abreast of the heavy demands made upon it for these facilities.

SCENIC AND HISTORICAL RESOURCES

The State has only recently assumed more responsibility for the task of providing recreational facilities in the form of parks and other scenic areas. In keeping with the historical tradition that has long been part of Delaware's heritage, the State has taken keen interest in the restoration and maintenance of the early landmarks and historic buildings that reflect the story of colonial days and early statehood.

The growth of population and the gradual diminishing of open country, particularly in New Castle County, has pointed up the need for recreational facilities in the form of open spaces where large numbers of people can enjoy the out-of-doors. City parks have long been established in Wilmington and in a few of the lesser towns, but until quite recently little had been done at state level to make available the use of larger areas more natural in their setting than a municipal public park or playground. Under legislation enacted in 1953, suburban areas not within incorporated municipalities can establish parks and recreation sites.

As part of the State's recreational program there have been created under the authority of the State Park Commission four state parks. The State Park Commission, itself an agency of the state's administrative organization, was established by act of legislature in 1935. The commission consists of five persons appointed by the governor for a term of five years. The commission must be bi-partisan. The commission is authorized to plan, develop, and maintain all areas entrusted to its administration by the legislature. It is charged with preserving "in every reasonable degree the scenic, historic, scientific, prehistoric, and wildlife values of such areas."⁸ The commission may select and acquire by gift, bequest, or purchase such lands as are desirable for use as recreational areas.⁹ Rules

and regulations governing these areas emanate from the commission. The commission has the power to borrow for the purpose of developing and improving the areas administered by it. The commission may rent state park land and it may lease concessions. It is permitted to bank the moneys so received on its own account; this is one of the state agencies that has so far been exempted from rigorous central budgetary controls.

There are presently four state parks in Delaware. The most recent acquisition is that of Brandywine Springs in Mill Creek Hundred in New Castle County. This park area was once a famous resort, later an amusement park, and is now being developed as a public recreation site. Pea Patch Island, in the middle of the Delaware River on which historic Fort Delaware is situated, has also recently been acquired as a state park. The Redden Forest, technically a state forest is also used as a state park. Trap Pond, a reclaimed marginal area in Sussex County, serves as a woodland retreat offering facilities for swimming, hiking, camping, and picnicking. This park is rapidly becoming well known throughout the State. The Fort Christina State Park in Wilmington includes "the Rocks", the landing place of the early Swedish settlers. Several of the beach areas along the bay and ocean are under the control of the State Park Commission. There is a bit of flexibility in the classification of a park area, particularly with respect to the administrative jurisdiction. All state parks are supposed to be within the authority of the State Park Commission, but the highway and forestry departments have also been given control over certain out-door recreational areas.

Interest in the preservation of Indian artifacts and in the promotion of knowledge concerning aboriginal culture in Delaware brought about, in 1953, the creation of the Delaware Archaeological Board. This agency cooperates with the Public Archives Commission, the Delaware State Museum, the University of Delaware, the State Board of Education, and the Highway Department in an effort to promote and engage in fundamental research into the archaeology of the State. It cooperates in the excavation of sites of historical significance that are in or may come into the possession or custody of any state agency. It furnishes the public and private schools of the State with information concerning its findings, and it disseminates archaeological facts through the medium of reports and periodic publications. The board consists of representatives from the above named agencies, plus one member each representing the Archaeological Society of Delaware and the Sussex Archaeological Association. The governor makes all appointments. The term of office is four years, and members serve without compensation.

Recently much interest has been shown in the life and times of the Indians who inhabited Delaware in the pre-colonial era, and several excellent publications have been forthcoming in this subject field. The Delaware Museum, situated at Dover, has developed quite an array of ma-

terial dealing with Indian and colonial life and practices. The Public Archives Commission, with the aid of the State Archivist, has been of inestimable help in the furtherance of the museum's efforts.

THE GEOLOGICAL SURVEY

Somewhat akin to the work done in archaeological research but for the purpose of ascertaining the geologic structure of the State, the nature of the several types of rocks, their extent, and other features of the substructure of the soil, is the activity of the State Geological Survey. The administrative operation of the Survey rests with the Delaware Geological Commission, consisting of five members, appointed by the governor to serve during his pleasure. The president of the University of Delaware is one of the members named to the commission. The executive arm of the commission is the state geologist who is appointed by the university.

The commission is charged with the systematic investigation of the geologic structure, the examination of all minerals, water, and other sources found in the soil. The state geologist prepares maps showing the water and soil conditions of the State, and from time to time publishes reports on the sub-surface water reserves. Much of this information has been of great aid in promoting the use of the land for industrial sites, especially in northern New Castle County. The importance of this type of investigation and research to the economic development of the State is generally recognized.

NOTES

¹ *Willson v Blackbird Creek Marsh Company*, 2 Peters 245 (1829).

² *Reorganization of the Executive Branch of the State Government of Delaware*, a report of the Commission on Reorganization, December, 1950.

³ U.S.C.A., Title 16, sec. 777.

⁴ For a good discussion of this refuge, see *Delaware, A Guide to the First State* (revised ed., New York: Hastings House, Writers' Project, 1955).

⁵ *Revised Code of Delaware* (1953), Title 7, sec. 1904.

⁶ For a good treatment of this subject see C. Liberman and J. Rosbrow, *Delaware Citizen*, pp. 153-55.

⁷ *Revised Code of Delaware* (1953), Title 7, sec. 4513.

⁸ *Revised Code of Delaware* (1953), Title 7, sec. 4703.

⁹ *Revised Code of Delaware* (1953), Title 7, ch. 47.



CHAPTER 18

Transportation

THE STORY of transportation in Delaware parallels the development of the State from an isolated rurality to an increasingly complex economy consisting of an expanding metropolitan area and a shrinking farming community. Prior to 1860 Delaware was an aggregation of small rural hamlets surrounded by relatively poor farmlands in the south and fairly rich acreages in the north. Wilmington was the only exception in this rural society, and even it resembled an overgrown village. Delaware was off the main north-south highways, a fact in which some of its citizens were greatly pleased.

HISTORY AND DEVELOPMENT

The Early Period

The close of the Civil War brought the railroad, and with its advent began the closer contact between upstate and downstate, which gave rise to an intensification of the rivalry existing between the two sections. Before the railroad, the only through traffic of any importance was that conducted by means of the river and the bay. Shallops and later small steamers made their way northward from ports on the little creeks emptying into the Delaware to New Castle, Wilmington, and Philadelphia, but much of the commerce by-passed Wilmington, the trade being between Philadelphia and the downstate towns. Wagon roads were poor to impassable, and few persons undertook the long ride from the Maryland border on the south to the "Circle", the boundary on the north. People were content to live and die within the narrow confines of their native villages or rural communities. It was the rare person who emigrated, and few persons moved into the State; therefore, to all intents and purposes,

Delaware was in a static situation until the struggle of the 1860's was over. Then the railroad came.

Although the railroad opened up lower Delaware and aided materially in fostering its agricultural economy by providing access to the markets of Philadelphia and the North, it rendered a distinct disservice to the development of a statewide community. Instead of the wagon roads being improved as links between the northern and southern sections of the State, they became mere feeder lines to the rail junctions. The embryonic highway system of Delaware looked much like a series of spider webs spun around points on the Del-Mar-Va railroad. The highways or roads in this system were used chiefly as means to bring produce to the railheads and not as avenues of social communication.

Thus, in spite of the railroad and the undeniable aid it rendered in breaking down the extreme isolationism of the rural communities, Delaware was still a splintered society with little opportunity for the cross fertilization of ideas, which in the final analysis makes for social growth. At the beginning of the present century, however, the means whereby Delaware would become a united community was in sight. In 1911 was begun the Du Pont Highway. That enterprise was to be an enduring monument to the foresight, the courage, and the civic consciousness of one of Delaware's foremost citizens—Colonel T. Coleman du Pont.

Also in 1911 the Delaware legislature, in view of need for highways, provided for the establishment of a boulevard commission, which consisted of the governor, lieutenant governor, and the secretary of state. In addition to the powers granted the commission, the legislature gave under its corporation law the right for corporations to be formed for the purpose of engaging in the laying of boulevards or highways provided they conformed to the specifications put forth by the Boulevard Commission. Colonel du Pont, together with some other interested persons, formed such a corporation and began the highway that was to bear his name. Struggle after struggle ensued between the builders and some of the downstate farmers, who felt the "rich men from New Castle" were engaged in a nefarious plot to take their land away from them. The farmers were opposed to relinquishing their land because they did not appreciate the value of the highway. In some instances eminent domain had to be resorted to before the land could be made available.

Finally, the people of the lower counties saw the advantage to be derived from a through north-south highway and lent their support to the project. It was 1921 before a sizable portion of the highway was completed, and that only in lower Sussex. One of the chief reasons for the slowness—in addition to delaying litigation—was the failure on the part of the State to promise to maintain the road after it was built. In 1916, with the passage of Federal highway legislation, the State set up machinery by which maintenance and further construction of the highway system

would be guaranteed. In 1917 the State Highway Commission was formed and took over the building of the DuPont Highway, and Delaware began a program of highway development, which today places it in an enviable position among the states in so far as public roads is concerned.

The Present Highway System

By the end of 1917, there were but 200 miles of paved highways in the State. Further improvement was slow during the early 1920's; although by 1924 the north-south highway was completed. One of the main problems connected with the construction of this highway was getting the legislature and the county levy courts to contribute enough money to advance construction to the point that the through road would be connected with a secondary system with feeder lines laid out to the main towns in the eastern and western parts of the State. Upon the urgent recommendation of Governor C. D. Buck, who had been chief engineer of the highway department before assuming the gubernatorial post, the General Assembly, in 1935, directed the department to take over all highways maintained by the counties, thus making possible the orderly construction and arrangement of the secondary road system.

By 1952, the total road mileage in Delaware was close to 4,000 with over 1,200 miles of hard surface. Much of the work during the period from 1935 to 1947, in bringing the dream of Colonel du Pont to fruition, was done by his son, Francis V. du Pont. Mr. F. V. du Pont served on the state highway commission from 1922 to 1949, most of the time as chairman. Under his personal prodding, the Du Pont Highway became a four-lane road, and it was his urging that brought about the construction of the Memorial Bridge over the Delaware River.

Unfortunately, as is the case in most states in the matter of highway development, politics of the crudest type has invaded the administration of the road system in Delaware. The legislature has at times become embroiled with highway officials over highway administration and occasionally has taken a strong hand in the actual operation of the highways and of the agencies engaged therein. Legislative history includes proposals to rip out existing highway boards, to name the membership on the commission, and to control the internal administration of the department. In 1939 these efforts reached culmination in a law passed over the governor's veto whereby the commission of five persons, which included the chief executive, in an ex officio capacity, was abolished and in its place a seven-man board was set up on which the governor did not sit.¹ The legislature named all seven members. This action was the direct out-growth of a political quarrel between the governor and the majority members of the legislature.

Again in 1947, when both governor and legislature were of the same party, an altercation took place between some members of the legislature

and the Superintendent of State Police, an officer under the jurisdiction of the highway commission. At that time the General Assembly demanded his ouster and were strong enough to force the governor and the highway commission to acquiesce.²

Ripper bills * have been employed to remove jurisdiction over certain operations from certain agencies and to place control within the highway commission even though that body was not immediately equipped to handle the new assignment. Such action took place in 1939 in the transfer of mosquito control from the commission of that name to the Highway Department.³

In 1955 the legislature enacted new ripper legislation abolishing the existing highway commission and establishing a new commission of twelve members, seven of whom were continued from the old commission. The legislation was prompted by partisan retaliation for the ripper effected in 1939.

STATE HIGHWAY ADMINISTRATION

Administrative Organization

In arranging the administrative organization of the State Highway Department the legislature has followed the pattern usual to administration in Delaware. The department is headed by a commission appointed by the governor. Each county has three representatives and there are three members appointed at large. All members are appointed for six years and their terms are staggered. The commission is bi-partisan, but because of the method of appointment, one party is in the majority. This fact is of significance in the dispensing of patronage through the department.

The commission elects one of its members as chairman. No compensation is paid for the members' services, but actual expenses are met by the State. The commission appoints a chief engineer who is the administrative officer of the Highway Department in charge of construction and maintenance. His salary is \$12,500; he is, therefore, among the higher paid officials of the State. In addition to the chief engineer the department employs a secretary who acts as the accountant of the commission. However, this official is placed in charge of the highway budget and he can countermand the suggestions and requests made by the chief engineer in the matter of staffing and purchase of supplies. The highway commission has failed to name one person who will serve as the executive director of the department, consequently the chairman of the commission must act as the chief executive officer, a burden that often proves unwieldy for a person not trained in administration. Coordination of surveys, mainte-

* A ripper bill is a bill whereby an administrative agency is abolished or its personnel dismissed from office and new personnel appointed by the legislature.

nance, and construction is effected through the chief engineer, but there is no one officer (except for the chairman of the commission) who can bring together staff and line operations so that the entire administration of the department will work as a unit.

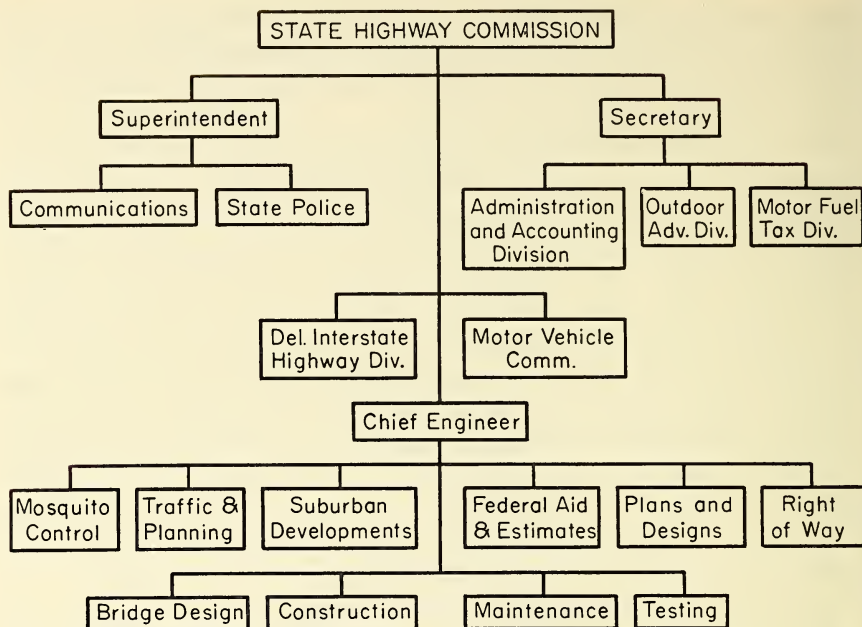
Since 1935 the State Highway Department has been charged with the determination of, the laying out, the construction, and maintenance of all highways in the State. If a highway runs through a town or city, the department has jurisdiction as to its construction and maintenance; but it does not, however, have control of the other streets in the town. There is no county road system in Delaware. Many suburban streets and roads have come under the jurisdiction of the highway commission largely because there is no local governmental competency charged with their construction. This situation has led to some difficulties arising among local residents, state highway officials, and developers of suburban communities over the question of who is responsible for the construction of suburban streets. In conjunction with its control over the highways the department may compel railroad companies to maintain proper crossings of their tracks by public roads. The department may order, with appeal to the superior court, the elimination of grade crossings.

In addition to its powers and duties concerning construction and maintenance of highways, the State Highway Department is charged by law with the regulation of outdoor advertising, the control of mosquitoes within the State, the control of the beach areas, and the maintenance of the State Police. The Motor Vehicle Division, a part of the highway department, is charged with the registration, licensing, and issuance of titles of all motor vehicles operating under state license, together with the examination and licensing of drivers. The division also issues driving regulations, although specific speed limits of the State are set by legislative enactment.

The State Highway Department has charge of all bridges within the State, together with the maintenance of groins and jetties along the waterfront.* Certain types of outdoor recreational areas are within its jurisdiction.

To perform these varied functions, the department has organized its administration and personnel into eight main groupings: (1) State Police, (2) Motor Vehicle Division, (3) Roads and Bridges Division, (4) Delaware River Crossing Division, (5) Administration and Accounting Division, (6) Motor Fuel Division, (7) Outdoor Advertising Division, and (8) the Delaware Interstate Highway Division. The Interstate Highway Division is an anomaly in the administrative arrangements of the highway department. The legislature in 1955 declared that this division shall con-

* With respect to the operation of a bridge and the maintenance of property connected with a bridge, the department acts as a public corporation. *Revised Code of Delaware* (1953), Title 17, sec. 307.



ORGANIZATION OF STATE HIGHWAY DEPARTMENT IN DELAWARE

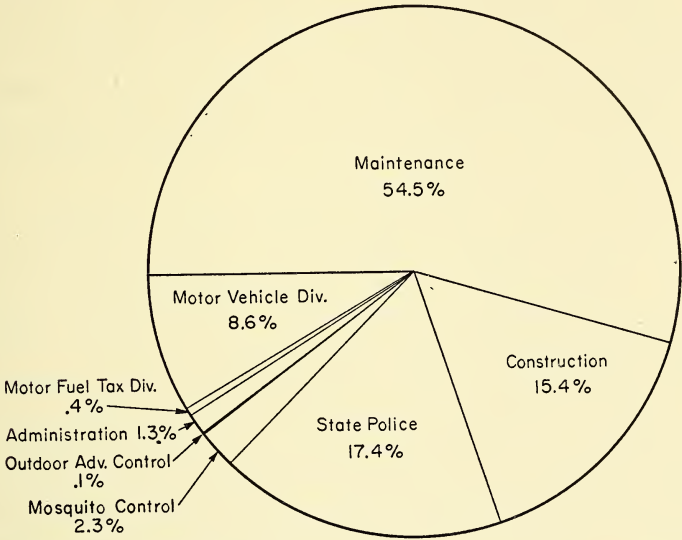
sist of three persons, two from one of the major parties, to be appointed by the highway commission for a term of six years. The division is actually an autonomous unit within the State Highway Department. Its chief duty is to make rules and regulations for the control of traffic using the approaches to the Delaware River Bridge and traffic on all limited access roads leading to the Bridge. No attempt is made to effect liaison between this division and the highway commission, and it is a wonder that such an administrative arrangement should ever have been set up. Eventually some coordination between the highway department and the interstate highway division will have to be brought about, otherwise it will be impossible to develop a coordinated highway program for the State.

State Highway Finance

The State's acceptance, under legislative act in 1935, of the responsibility for the construction and maintenance of all roads (exclusive of local streets and lanes) burdened the State with a serious financial problem in highway administration. No longer could the State avoid the necessity of providing adequate revenues for the highway system; nor could it avoid the criticism for the improper conduct of highway administration. One aspect of highway operation is that of planning for future development; the demand for highway expansion is always present. To meet the demands for repair and new construction careful allocation and use of limited funds must be made. While the grant-in-aid to highway construction

made by the Federal government is of decided help in getting highways built, the maintenance costs mount with each new mile of roadway, and these costs are met almost entirely from State funds.

The total expenditure for regular highway facilities in Delaware in 1953 was \$14,589,000 of which \$2,432,000 was received from the Federal government. Current operation of the road system in that year approximated \$2,750,000; capital outlay (including the moneys received from Federal grants) was \$11,855,000.⁴



DISTRIBUTION OF STATE HIGHWAY DEPARTMENT EXPENDITURES,
FISCAL YEAR 1955-56

The State pays approximately 85 per cent of highway costs in Delaware. The Federal Highway Act of 1954 has provisions in it that will eventually increase the Federal share of highway expense in the State. Part of the present highway program is being paid for out of long-term, earmarked, bond issues. Several large issues have provided for the tremendous building costs incurred in the creation of new underpasses and four-lane roadways in the northern area. The bonded indebtedness in 1954 for highway construction was slightly over \$10 million.

The opening of the Delaware River Memorial Bridge in 1952 also necessitated the construction of new approaches. All these projects have resulted in increased expenditures, only part of which could be met from highway taxes. It is important to note here that there are no earmarked highway revenues in Delaware. Gasoline taxes and motor vehicles licenses are turned over to the general treasury; by earmarking the bond issues, however, something like earmarked revenues results.

Although the legislature has refused to permit the earmarking of high-

way revenues, it has allowed moneys appropriated to the highway department and unspent by it to be carried over for construction and maintenance. This practice gives the highway department a decided fiscal advantage over other state agencies whose unused funds revert to the general treasury.

Highway revenue has long created a fiscal problem in Delaware. Since 1941 the moneys received from motor fuel taxes and vehicle licenses, and abutment levies assessed against property owners have been placed in the General Fund. This policy has been bitterly opposed by many interested groups associated with highway promotion. Motor fuel taxes alone provided slightly over 20 per cent of state tax revenue in 1953. Vehicle licenses brought in nearly \$2 million or nearly one twelfth of the tax revenue of that year. During the period 1950-53, motor fuel taxes and vehicular license fees together have furnished nearly one fifth of the income from taxes at state level in Delaware.

Although there are never quite enough funds to meet the rising demands for new and improved roads, the State Highway Department is one of the few agencies that has little trouble in getting requested appropriations from the legislature, particularly for road building. Requests for other agencies, such as the State Police, Mosquito Control Division, and for general office expenses, often encounter considerable opposition. The highway system of the state is, however, a matter of pride, particularly in the downstate areas, and local legislators are under local pressure to maintain proper advances in the construction and improvement of the road system in that section of the State. The fairly sizable Federal grant-in-aid for highway construction also tends to act as a pump-priming device in obtaining appropriations from the General Assembly.

The new Interstate Highway Division, which administers the Delaware Memorial Bridge over the Delaware River receives no funds from the State. The tolls from that facility cover all cost of operation.

Highway Construction and Maintenance

By far the bulk of the State Highway Department's work consists of road construction and the maintenance of the highway system. Private contractors do most of the construction work, but maintenance is largely a departmental job performed by the maintenance crews operating in each of the counties under the supervision of the chief engineer. All of the work in planning, building, and servicing the road system in the State comes under the direction of the chief engineer, who is also in charge of mosquito controls.

Survey of traffic as an antecedent to highway planning and construction is handled by the Traffic and Planning Division, and the feasibility of absorbing suburban roads and streets into the state highway system is determined by this Division of Suburban Roads.

With respect to the construction of roads, the department calls for bids from reputable contractors, whose bids must conform to the specifications drawn up by the department. Federal highway aid to the states also contains provisions respecting highway specifications, and where these apply to the work of the private contractors they must be met in addition to the State's requirements.

The acquisition of private land for the use in highway construction is within the purview of the Highway Department. Condemnation of the land required for the highway is effected through court action.

Constant inspection of all road construction is performed by the chief engineer and his staff, and any deviation from specifications on the part of the contractor can result in penalties in the form of damages being enforced against him. Testing of materials used in highway work is done through the engineering services. Soil tests are run to determine the problems to be met with in laying down a road. In a connection with highway maintenance the department employs snow and ice removal crews, grass mowers, and ditch cleaners. Approximately 1,000 employees are engaged in highway maintenance.

Highway construction and maintenance work is done under constant pressure from several major interested groups, which in many ways help fashion highway policy. Motor clubs, highway users' associations, the farm organizations, and the Federal government through its aid program all have influence in the determination of road construction and maintenance. Sometimes the department can use the pressures emanating from the Federal Road Commission as counter-irritants against the overweening demands of the private interest groups.

Within recent years severe strain has been placed upon the highway facilities in the northern part of the State and has necessitated the relocation and widening of roadways. Limited access highway plans are under discussion,* but so far little has been done to execute these programs because of strenuous opposition from local merchants and localities. It would appear that within the next decade serious reorganization of the present highway arrangements particularly in northern New Castle County will have to be undertaken if the increasing highway use is to be satisfactorily provided for. Dual highways, limited access roads, and the erection of underpasses will be in order if the efficiency and safety of Delaware's roads are to be maintained.

Services to Motorists

In addition to providing a modern road system, the State Highway Department provides a series of services for the motoring public that go far

* A limited access road is a throughway, access to and egress from being afforded at infrequent points. The purpose of this type of road is the prevention of the commingling of through traffic and local traffic.

to make transportation by automobile in the First State pleasurable and relatively safe. Among these are the following: Road maps and charts depicting the meanings of road signs and markers are available to the public free of charge; rest stops along the roadside both for picnicking and viewing the countryside have been erected at convenient points along the main highways; access to the beachlands along the bay and ocean have facilitated the use of these watering places; a safety education program has been instituted which includes visits by members of the State Police and the engineering services to schools, clubs, churches, and civic meetings for the purpose of stressing the need for care on the highways; bulletins regarding road conditions during inclement weather are released by the State Police. Snow removal is handled outside the larger municipalities by the department's crews, and the dispatch with which this work has been done has been a great factor in keeping Delaware's roads clear even though the snowfall is sudden and heavy. The department also engages in an interstate reciprocity program obtaining for Delaware motorists the privileges granted by other states to their drivers.

MOTOR VEHICLE ADMINISTRATION

Until 1939 motor vehicle registration and licensing were under the direction of the secretary of state. The transfer of these functions to the Highway Department came about as a result of a political battle between the governor and the members of the opposite party in the General Assembly.⁵

The work of the Motor Vehicle Division of the State Highway Department has expanded tremendously since 1940. Registration of motor vehicles and the issuance of drivers' licenses have more than doubled within the past fifteen years. Increased responsibility has been placed upon this division with the passing of the accident liability law whereby all motorists after having an accident for which they are responsible must become insured or post bond in the amount of \$11,000. In addition a training program for drivers has been established within the division, and the general testing program for the issuance of driving licenses is now handled by the Motor Vehicle Division.

Administrative Organization

Several administrative changes were effected within the Motor Vehicle Division in 1952 as a result of the increased work load. Presently there are four operating subdivisions and two staff groups making up this division. The operating subdivisions include: (1) registration, (2) licenses, (3) inspection lanes, (4) financial responsibility control. The staff agencies are: (1) records and files and (2) auditing. The motor vehicle commissioner, who is the administrative head of the division, is appointed

by the State Highway Commission for the term of one year, although the length of the term may be shortened at the Highway Commission's discretion. The commissioner's office is in Dover, the state capital. The internal arrangement of his division is left in his hands with only general surveillance by the Highway Commission. Control over division personnel rests with him.

Registration and Titling of Motor Vehicles

Over 150,000 motor vehicles were registered in the State of Delaware in 1954. Vehicles must be registered for one year or six months, and before registration is renewed each vehicle must pass an inspection conducted by the Motor Vehicle Division at one of its three inspection lanes located in Wilmington, Dover, and Georgetown. There are four registration periods each year, and a metal date tag is inserted in each license plate showing the month and year of termination of registration. Fees vary from \$4.00 (for motorcycles) upward, depending upon weight and type of vehicle registered. Delaware employs the permanent license plate, which is attached to a vehicle as long as it is registered in the State. The license usually remains with the vehicle when it is sold, but, upon payment of extra fee, an owner may transfer the license from one vehicle to another upon purchase.

Official certificates of title for motor vehicles purchased in the State of Delaware are issued by the Motor Vehicle Division, and the owner of a motor vehicle registered in this State may not operate or permit the operation of a such vehicle within the State without first obtaining a certificate of title from the division. All applications for title to new vehicles purchased from automobile dealers must be accompanied by a bill of sale showing whatever liens apply. The certificate of title is good for the life of the motor vehicle as long as the vehicle is owned or held by the original holder. All transfers of title are handled by the division. If a motor vehicle is transferred out of the State, the registration license plates must be returned to the Division of Motor Vehicles and the original title issued by the State of Delaware is cancelled.

Operator's and Chauffeur's Licenses

All persons operating motor vehicles within the State, except those using road building machinery, farm tractors, or military personnel operating equipment under authority, must have a license issued by the Division of Motor Vehicles unless, as a non-resident the person has a license from another state to operate motor vehicles. Ordinary licensees in Delaware must be eighteen or over (sixteen with parent's consent), be physically and mentally able to drive a vehicle and to read and understand road signs. Chauffeurs must be eighteen years or over, and drivers of school busses, twenty-one years or over. A chauffeur's license card must bear

his photograph and general description; the ordinary license carries the bearer's general identification, age and sex. Licenses are renewable annually on the birthday of the licensee—an innovation that spreads out of the work of re-licensing and also helps remind people of the need for renewal. There is provision for permanent license.

Revocation of license is mandatory if a driver is convicted of manslaughter resulting from the operation of a motor vehicle, if he drives a vehicle while under the influence of intoxicating liquors and is apprehended, or if he perjures himself in making affidavit concerning motor vehicle registration or licensing. Discretionary suspension of license for one year may occur for reckless or unlawful operation of a motor vehicle, incompetency with respect to driving, or driving a motor vehicle without the consent of owner, whether an outright theft or not. Appeals from revocation or suspension may be taken to the superior court.

Financial Responsibility

In 1951 the General Assembly decreed that operators of motor vehicles licensed in this State must show financial responsibility for accidents for which they are responsible. Any motor accident involving fatality or bodily injury or property damage over \$25 must be reported to the Motor Vehicle Commission. The license of the person involved in such accident is suspended unless he is held not liable for the accident or until he has satisfied the commissioner that he can meet any claim against him to the amount of \$11,000, or can show that he has an automobile liability insurance providing for minimum payments of \$5,000 property damage and \$10,000 personal injury.

Highway Safety Program

The Safety Education Division of the State Police has the task of designing ways and means to promote safety on the state's highways and to educate the motorists and pedestrians in the proper use of these highways. Posters warning against careless driving habits have been distributed each month throughout the State, and every effort is made in the public press to bring the costs of highway accidents to the attention of the public. Television and radio programs are given at frequent intervals stressing the need for care while driving or walking upon the public roads. The Driver Improvement Division of the Motor Vehicle Division has charge of handling those drivers who seem to have an accident "proneness" and seeing that they either improve their driving habits or are taken off the highways. Schools and private automobile associations cooperate with the State Police and Motor Vehicle Division in this effort to free the State's highways from accidents and the conditions causing them.

WATER TRANSPORTATION

The use of the waterways to which the State has access has been of vital importance to the success of Delaware industry and commerce. During the nineteenth century and most of the early part of the twentieth century, Delaware depended to a considerable extent upon the existence of navigable waterways and sufficient harborage to facilitate the transportation of goods. Although the coming of the railroad and the advent of truck and air transport has rendered water transportation less important than it once was, any serious failure of this means of conveyance would upset the proper flow of commerce from and to the State.

Two state agencies have the duty of seeing to it that efficient use of the Delaware Bay and River is practiced so as to insure the maximum benefit from these natural avenues of intercourse. One of these agencies, the Pilot Commission, is closely associated with the pilots' associations, which have a monopoly over the guiding of vessels from and to the ports on the Delaware River; the other, the Delaware Waterfront Commission (which has been discussed briefly under the general topic of conservation) is charged with the surveillance of the State's rather extensive waterfront to see to it that waterfront property is conserved and improved and that port facilities are maintained in order to facilitate their use in connection with water-borne commerce.

The Pilot Commission

Located along the waterway of bay and river that form the estuary that gives the State its name, Delaware has enjoyed the advantages of water transportation denied to many an inland state. The tortuous channel of the Delaware and the storm-ridden capes at the mouth of the river require careful control over traffic using the bay and river and the contiguous reaches of the sea. From the late nineteenth century, Delaware has assumed the responsibility of regulating the use of these waters by vessels arriving from or bound to any foreign port or place.* Under Delaware law these vessels must take aboard a pilot so that they may be conducted up the river or down the bay to the sea. Vessels employed in and licensed for the coastal trade do not have to take a pilot.

As is true in most instances where conditions warrant the presence of pilots for the conduct of vessels through a particular watercourse, a pilot association under public regulation has been formed in Delaware. Under statute, a pilot commission has been established consisting of five persons appointed by the governor for a term of five years. The only stipulation for appointment to the commission is that a person be a citizen of the State

* Except American vessels whose cargoes are exclusively of coal mined in the United States.

and acquainted with the navigation of the Delaware Bay and River. The duties of the commission include the granting of licenses to persons to act as pilots and the making of rules for their government. The number of apprentices training to be pilots is determined by the commission. Rates and other compensations of pilotage are determined by the legislature.

The Waterfront Commission

In addition to the regulation of the waterways afforded by the Pilot Commission, the General Assembly has established a Waterfront Commission consisting of three persons appointed by the governor for a term of six years. There must be one member from each county. The member from New Castle must be a member of the Harbor Commission of the city of Wilmington. The duties of the Waterfront Commission are (1) to examine, investigate, and recommend to the General Assembly plans for the protection of the waterfront and waterways of the State against erosion; (2) to cooperate with local authorities in the State to improve waterfront property; (3) to carry into effect such plans or recommendations for the improvement of the waterways of the State as are adopted by the legislature.

In respect to the last named provisions, the Waterfront Commission is directed to work with the Board of Harbor Commissioners of the City of Wilmington and the State Highway Department. The past activity of the commission has been limited to investigation of proposals put forth by interested citizens for the improvement of the waterfront property along the river. The large marine terminal in Wilmington, which is municipally owned, was developed as a result of strong citizen interest in improving the water transportation facilities in the northern section of the State.

AIR TRANSPORTATION

In 1923 Delaware enacted its first controls over the operation of aircraft in the State. Definition of authority over space above the lands and waters of the State preceded provisions governing liability for damage to land by aircraft, to collision of aircraft, to crimes and torts committed in flight, and to dangerous flying. Hunting from aircraft was prohibited under the statutes. Enforcement of these provisions was left to the local police authorities, and there were very few prosecutions. The Uniform State Law for Aeronautics was adopted in 1929 in order to bring the Delaware Code governing operations of aircraft in line with the practice general throughout the Nation.

With the increase in air transport following World War II, there was need for more systematic regulation of aircraft, air fields, and air travel. In 1945 the General Assembly established the Delaware Aeronautics Commission consisting of five persons, appointed by the governor for

staggered terms of three years each. Not more than three members may be of the same political party. The commission is empowered to appoint a director who would be the executive officer of the commission and who would be charged specifically with the enforcement of the rules and regulations promulgated by the commission in accordance with the laws. The commission has not seen fit to appoint a director. Instead, a member of the commission, who has served continuously since its creation, acts as the administrative officer. He is designated merely as the secretary of the agency.

The commission has general supervision over aeronautics within the State. It is directed to encourage the establishment of airports and other air transportation facilities for the use of aircraft operating in Delaware. The commission has the power to establish a state airways system. It provides for the general safety of the public with respect to the use of the air by aircraft. Any political subdivision of the State may request the advice and technical services of this agency in the matter of construction, maintenance or operation of an airport or a restricted landing area. The commission serves as liaison between the state and Federal authorities in matters relating to aircraft and airports. In respect of this duty, the commission also acts as the agent of any political subdivision that receives Federal funds for the purpose of constructing or promoting air transportation facilities within a given area. The commission requires the registration with it of federal licenses, permits, or certificates of civil aircraft engaged in air navigation within the State. Power to revoke or refuse a license in the case of any airman deemed unqualified rests with the commission. It determines whether a certificate of approval should be granted for the construction of an airport or the use of a plot of ground as an air field. Appeals from such decisions rest with the superior court.

Although the statutes are quite explicit with respect to the administration of air control, the aeronautics commission has not had a great deal to do. The State is not large enough to be seriously concerned with the need for aircraft regulation by local or state authorities. Although there are several large airports operated either by the United States Air Force or by large transcontinental airlines, Federal law is sufficient to insure the enforcement of minimum safety measures. The Aeronautics Commission has not been faced with any great demand for the location of airports in the State. The development of commercial air navigational facilities in Delaware has been slow. Accordingly, the work of this agency to date has been nominal. Yet there are many indications that air traffic within the small confines of Delaware is growing. The location of the large chemical centers and the rise of the manufacturing plants in northern New Castle County means that personnel of these organizations require access to fast air transport. New Castle County Airport, which is operated under auspices of the New Castle levy court, has been expanded tremen-

dously since its opening in the early 1940's. Private airfields such as Du Pont Airfield in Christiana Hundred are handling an increasing amount of air travel. Delaware's citizens are fast becoming air-minded; a fact that is in sharp contrast with the isolationism that pervaded the State a few decades ago.

Railroad, automobile, and now aircraft have been the vehicles by which the change from an intense ruralism to a complex industrial civilization has been effected. Today, the main arteries of commerce extend through the First State. Gradually but with certainty, the social attitudes and political concepts resulting from aloofness and apartness are being altered. Much of this change can be ascribed to improvements in transportation and communication.

NOTES

¹ 42 *Delaware Laws* 173, 1939.

² 46 *Delaware Laws* 343, 1947.

³ 42 *Delaware Laws* 12, 1939.

⁴ Statistics are taken from *Compendium of State Government Finances in 1953*, Bureau of the Census, U. S. Department of Commerce, (Washington D. C., 1954).

⁵ *Wilmington Journal-Every-Evening*, January 28, 1939.



CHAPTER 19

Labor

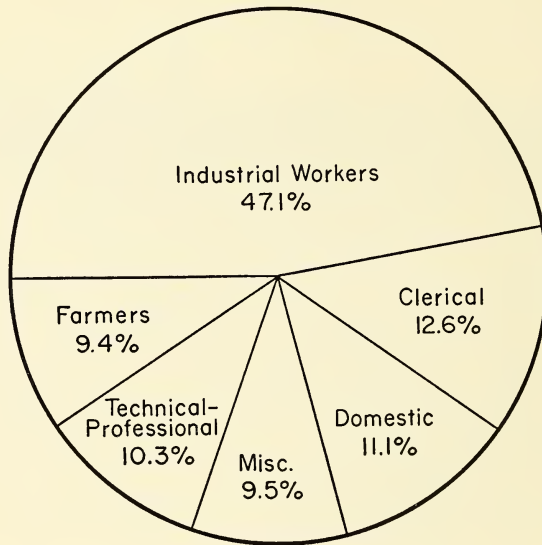
THE LAST HALF CENTURY has witnessed a basic change in the labor situation in Delaware. The most noticeable aspect of the change is in the tremendous growth in the worker group. Exclusive of farm labor, there were approximately 20,000 people employed in Delaware in 1910, or slightly over 10 per cent of the population of the State. The State was basically agricultural. In 1950 the total employed, exclusive of farm labor, was 115,200 or 36 per cent of the population. Of those employed in 1950, over 51,000 were engaged in construction and manufacturing. In 1910 that number was slightly under 12,000. Between 1940 and 1950 the increase in total number of industrial workers has been phenomenal. In 1940 the figure stood at 36,637. In 1950 it was nearly 60,000. The vast majority of the industrial workers are located in New Castle County. In 1945 only 8 per cent of this group was to be found in Kent County. Slightly over 22 per cent was in Sussex, and nearly 70 per cent was in New Castle.¹

Another occupational area that has mushroomed is that of clerical help. The location in Wilmington of the home offices of several chemical companies has caused the employment of thousands of typists, file clerks, bookkeepers, and general office workers. In the brief space of twenty years—for which period the Census has kept a fairly accurate record of occupational classification—Delaware has experienced an unprecedented rise in the number of its clerical workers. In 1930 the number stood at 8,500 with a somewhat even division between males and females. In 1950 the number had risen to 16,000, of which over two thirds were female.

A concomitant of the increase in the number of industrial workers and white collar employees has been the steady diminution of those engaged in agriculture. From slightly over 17,000 in 1930 the number of agri-

cultural workers dropped to 11,438 in 1950. The greater portion of those currently in agriculture are farmers owning or renting the land they work. The hired hand is now relatively rare in Delaware, but in his place have come bands of migrants who aid in harvesting and work in the canneries. Most of the migrants are Negroes, and their presence in the State has constituted a growing problem in public health, because of unsanitary conditions under which they live when working in canneries. Many of the migrants' quarters are unfit for human habitation.²

Another major category of the worker group is the service class. By far the largest portion of this group is Negro. The classification includes those engaged by the day in private homes and those with steady employment in hotels, eating establishments, and office buildings. In 1930 their number was 10,000. In 1950 it approached 14,000.



DISTRIBUTION OF GAINFULLY EMPLOYED IN DELAWARE, 1953

One last grouping of wage-earners that should be mentioned in any discussion of the worker force is the professional and technical class. This is a sort of catch-all category, but in general, it includes those persons who had to have formal instruction above the high school level in order to qualify for their positions. This class has multiplied at a mercurial rate in Delaware. In 1930 it numbered but 6,700, whereas in 1950 it was close to 13,000. The majority of these people are found in northern New Castle County, and their employment is largely with the large chemical industries located there. In many respects they have little in common with the rest of the worker groups in the State, but nonetheless they are wage earners and subject to the dominance of employers. In fact, much

of their mobility has gone. They are in no small way wedded to their companies, and after a half dozen or more years of service they are apt to find themselves rather incapable of moving about within their chosen field of endeavor. The Du Pont Company, for example, prides itself upon the longevity in service of its personnel.

GROWTH AND DEVELOPMENT OF UNIONS

Until the turn of the present century, there was no labor question in Delaware. The workers in Delaware were not generally organized * so that labor-management problems did not readily reach the surface; there was little open conflict between the two groups. Even after some organization did occur in the form of small craft unions the membership was not large and few of the unions felt able to engage in open struggle with management. The customary Delaware conservatism seemed to pervade the state and the so-called "radicalism" attached to union membership was looked upon with disapproval.

Beginning with the turn of the century, however, the craftsmen organized. Carpenters and joiners, printers, painters, plumbers, steam fitters, and the new electrical workers formed "brotherhoods" and "societies," which no longer had the fraternal aspects of association as their end but rather had as their goal the improvement of wages, hours, and working benefits. The temporary decrease in unionism that followed World War I throughout the United States also occurred in Delaware. Employers set about lustily to revive the "open shop." Some were for the total destruction of the labor unions. The Depression eventually turned the tide. At first, union membership declined to a new low, but the need of the workers to prevent management from using the unemployed as a weapon against those employed was intensified. The coming of the New Deal was the ready fuel for the new flame of unionism that spread throughout the Nation during the middle 1930's.

The American Federation of Labor was the first to drive for new members; it was closely followed by the new industrial union program sponsored by the Congress of Industrial Organizations. The Congress of Industrial Organizations was introduced to Delaware in 1937. It was this organization that spurred the membership in unions to new heights. One of the most formidable assists was given to unionism in 1939 by the formation of a large independent association among the telephone workers in the State. In the same year, the shipyards along the Christina River mushroomed. Close to 6,000 workers were employed in shipbuilding, and most of them became members of the Industrial Union of Marine and

* There was but one labor union in Delaware until 1864. Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), II, 555.

Shipbuilding Workers of America, Congress of Industrial Organizations. By 1945 more than 80 per cent of Delaware's industrial workers were members of unions or at least represented by unions.³

The Congress of Industrial Organizations in 1945 claimed that it represented at least 28,000 workers in Delaware. The American Federation of Labor and the Railroad Brotherhoods held they spoke for at least 12,000. The latter figure would appear to be more realistic than the former. Estimates can be gotten from the membership lists, but inasmuch as some of the workers live outside the State and others live in the State but work elsewhere, the lists are not very useful in terms of union membership in Delaware. It is probable that presently the large unions represent some 40,000 to 45,000 workers. The vast majority of these persons work in northern New Castle County.

There is still opposition to unionization in the downstate areas. Some of the workers in the poultry industry and some industrial workers in the Laurel-Seaford area in Sussex County have joined unions, but the vast majority of the downstate workers either belong to company unions or are unorganized. Attempts to introduce the CIO to the downstate area has resulted in violence.⁴ This situation is not only the result of local antipathy to unions, but also of the way in which unionization has been attempted. Outside organizers have come into the area and have been met by local distrust of the stranger.

There is general antipathy throughout the State to outside influence in the matter of employer-employee relations. During the senatorial campaign of 1952, the Republican candidate spoke in favor of the Taft-Hartley Act and stated as one of his reasons the fact that it helped curtail the power of the "labor bosses," by which were meant the national union officers. This statement met with widespread approval throughout the southern part of the State.⁵ As a further earnest of the general feeling respecting unionization, the action of the State Federation of Labor * in holding a Sussex County parley is in point. In the summer of 1952, the State Federation held its annual meeting for the first time at Rehoboth Beach in the southern part of the State. Part of the reason for the downstate meeting was the recognition by the American Federation of Labor that the labor movement in that area is growing. Most of the union members in Kent and Sussex are to be found among the building trades. Many of these workers are local citizens who have spent their lives in those counties. Their organizations are highly local and are respected in the communities. The annual meeting itself was of a home-grown variety, and only those members who were delegates from the local unions could speak or cast votes in the parley.⁶

Localism wields its influence in determining the way the labor problem

* The association of craft unions in the City of Wilmington is known as the Central Labor Union.

will be handled in Delaware. The state government's position vis-a-vis labor has consistently reflected the dominance of the local point of view. Although the labor situation is to be found largely within the northern section of the State, the legislatures reflecting as they do a strongly rural attitude of mind, have not shown much sympathy for the demands of labor. Part of this lack is, of course, a result of the upstate-downstate antagonisms. Much of it can also be attributed to the conservative business-like approach usually exhibited by the state government. To a great extent, of course, the lack of sympathy is merely a matter of political lag. Labor's coming of age in the First State has been relatively recent. It will take a while before the government and officialdom catch up with the economic and social changes that have occurred. Many of those in political power are still thinking in terms of a commercial-agrarian culture. This situation is changing, but the present situation shows the government-labor relationship to be one of mutual wariness if not of mistrust. Part of the reason for this is the resentment by the unions of the failure of either major political party to espouse openly the *cause* of labor as distinguished from their promise to fulfill some of labor's demands.⁷ The necessity of satisfying the different areas of the State has made it impossible for both parties, especially the Democratic, to throw their lot wholeheartedly with the urban industrial groups. Labor must first come to realize it cannot expect either party to "adopt" it. Once this realization is forthcoming and labor is willing to play within the party system as it is organized within the framework of county power, the industrial worker class will become more influential in state politics.

ORGANIZATION FOR LABOR LAW ADMINISTRATION

The administrative organization for the application of laws affecting conditions of labor in the State of Delaware is diffuse. There are four state agencies engaged in the administration of labor law at state level: They are: (1) the Labor Commission, (2) the Industrial Accident Board, (3) the Unemployment Compensation Commission, and (4) Advisory Council to the Unemployment Compensation Commission.

The oldest state agency administering laws affecting labor is the Labor Commission of Delaware, established in 1909. It is composed of five members, one appointed from each county and two at large; all appointments are made by the governor. The term of office for this commission is five years. This agency is in no way a department of labor. Several attempts have been made to establish a state department of labor but to no avail. The latest effort was in 1953 when a bill was introduced into the General Assembly calling for the creation of a department of labor and industrial relations.⁸ This proposal would have abolished the present Labor Commission, transferred its powers to the new agency, and included

within that agency the duties and responsibilities of the Board of Boiler Rules, the Unemployment Compensation Commission, and the Industrial Accident Board. The bill called for a single commissioner charged with the over-all administration of these several functions. It failed of passage. The pressure brought to bear against the bill by the existing administrative groups covering the labor field proved too great.

The Labor Commission, as it is now constituted, administers the state child labor law, the ten-hour law for female employees, and the sanitary law for female employees.⁹ The members of the commission serve without pay, but the secretary, who is appointed by them to handle the routine office procedure, receives a nominal salary. The commission appoints the State child labor inspector, who serves as administrative officer of the commission. His salary is quite modest.

The powers of the commission are extremely limited. In general, the agency serves (1) as an inspecting agency to see that women are not permitted to work in certain establishments for more than six days in any one week, or more than fifty-five hours in any week; (2) as an inspecting agency to see that sanitary conditions are maintained in all places of business in which females are employed, and (3) as an enforcement agency to see that statutes prescribing the minimum ages and working hours for children are obeyed.

The Industrial Accident Board is composed of three persons appointed by the governor for terms of six years each. The members receive an annual stipend of \$3,600 together with expenses. Thus, it is one of the very few agencies in the State to which a salary is ascribed. Prior to 1941, the members could be removed by the governor without cause, but in that year (after a serious political struggle) the law was changed by deleting this provision. The board elects its own chairman from among its membership, and a secretary is hired to care for the routine work of the agency.

The administration of the Unemployment Compensation act is in the hands of the Unemployment Compensation Commission, which consists of four members appointed by the governor for a term of six years. The governor may at any time remove, after notice and hearing, any commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. Compensation is \$4,000 annually for each member except the chairman, who receives \$9,000. The chairman is designated by the governor from among the members, and he is also executive director of the agency. The commission chooses its own secretary, who is not a member, who serves as an assistant to the executive director.

Another state agency that deals with unemployment is the Advisory Council to the Unemployment Compensation Commission. The council consists of seven persons appointed by the governor with senatorial consent. These members hold office for six years. One of the group is

chosen chairman by the council. It conducts research into the employment situation in the State, and its chief function is to make recommendations to the governor and the legislature regarding changes in the unemployment compensation law.

The State Employment Service is under the jurisdiction of the Unemployment Compensation Commission. Under the provisions of the Wagner-Peyser Act, as amended, the UCC is constituted and designated the official agency of the State in the operation of public services for employment.

LABOR STANDARDS

Hours and Conditions of Labor

State laws affecting hours and conditions of labor in Delaware apply only to women and children. The conservative tone of the State and the slow development of labor unions have been the leading factors in the lack of rules and regulations governing conditions of general employment.

Some minor regulations governing the work of persons engaged in the building trades have been enacted by the state legislature. These rules cover safety devices and the taking of proper precautions by employers to see that workmen are not unnecessarily endangered in the course of their employment. Although the law establishing workmen's compensation for injuries sustained in employment does not require state inspection of factory conditions, the insurance companies involved in workmen's compensation are constantly on the lookout to see that insurers comply with basic safety rules, some of which are written into the policies.

Protection of Women Workers

The basic legal protection afforded female workers is found in the Women's Ten Hour Law. Strict rules as to the length of the working day and the physical conditions in which work is done govern the employment of women workers. No female (with some few exceptions) can be employed in any mercantile, mechanical, manufacturing, laundry, baking, dressmaking or printing establishment, telephone or telegraph office or exchange, restaurant, hotel, place of amusement or office for more than six days in any one calendar week, nor more than ten hours in any one day, or more than fifty-five hours in any one week. Specific rest periods are required for female workers during the hours of employment. Suitable and accessible washrooms and toilet facilities are required in every establishment employing females. The statutes further require that proper ventilation, heating, and lighting be provided in the workrooms where women employees labor. To enforce these rules the Labor Commission appoints inspectors who have the right of entry upon the premises of any place em-

ploying women. Justices of the peace have jurisdiction over all violations of the labor code respecting female workers.

Child Labor Law

As early as 1881 the General Assembly decreed by passage of the Child Labor Law that certain types of occupation would be denied children. One such type was any occupation involving tight-rope walking and dancing, acrobatics, and gymnastics. No child under fifteen years of age can be employed in such activities according to Delaware law.¹⁰ No minor may be employed in a house of assignation.

Those occupations that are proscribed for children by the General Assembly include employment in the operation of steam boilers or blast furnaces, and employment in the use of certain dangerous tools such as circular saws and cutting machines. In general, employment is denied a child under sixteen in areas where machinery is situated. Occupations that might undermine the morals of youth are also banned, these by order of the Labor Commission. Other types of dangerous occupation such as electrical wiring work cannot be engaged in by persons under eighteen years of age. Likewise work on railroad and in car shops is prohibited to persons under eighteen years. In order to work in liquor stores an individual must be at least twenty-one and in some cases over twenty-five years of age. The age of newsboys is set at twelve and over. No minor under sixteen may work beyond seven o'clock in the evening, nor before six o'clock in the morning.

Working certificates are available through cooperation with the school authorities for minors between the ages of fourteen and sixteen, but there are definite requirements for part time education in such event. Enforcement of the provisions of the law respecting the employment of minors is under the jurisdiction of the Labor Commission working through the Child Labor Inspector who is responsible to the commission. Because of the inadequate staffing of the Labor Commission, enforcement is often not exercised to the fullest.

INSPECTION SERVICES

Other than the inspectional services afforded under the Women's Ten Hour Law and the Child Labor Act, as noted above, there is little in the statutes covering factory inspection and surveillance of places of employment to insure the maintenance of proper working conditions.

Factory Inspection

The State Board of Health is enjoined by law to inspect establishments engaged in the manufacture of mattresses and bedding. The major reason for this inspection is to see that the materials used in such manufacturing

are sterilized. It is only incidental to such inspection that the laboring conditions in such places come under the surveillance of the State Board of Health. All restaurants, eating places, and general food handling establishments are required to maintain proper health conditions for their employees and to see that periodic check-ups on the health of their workers are made.

As stated earlier, insurance firms underwriting the workmen's compensation contracts keep a check upon the working conditions of the places covered by their policies. This sort of surveillance is at best informal. In the erection, repairing, and painting of buildings the statutes require that proper safeguards be taken to reduce the hazards met with in such occupation. Enforcement is sporadic and little effort is made to effect a proper control over conditions of outside labor.

Boiler Inspection

One of the less known administrative agencies concerned with labor safety is the Board of Boiler Rules. The members of the board are appointed by the governor for a term of five years. Usually, one of the members is a professor of mechanical engineering; one is a mechanical engineer; another is a user of boilers; one is actively engaged in boiler manufacturing; and one is a licensed stationary engineer. In general, the board is charged with formulating rules and regulations for the sale and for the proper construction and use of boilers. Boilers covered under existing Federal law are exempt from the surveillance of this board.

INDUSTRIAL RELATIONS

The growth of labor problems in Delaware has been concomitant with the rise of industrialization. The State has been slow to bring industrial relations within the sphere of governmental surveillance. Until quite recently, the only action by the state authorities in respect of this development had been the passing of statutes governing industrial accident insurance and regulating the hours of child and female labor. The passage of the unemployment compensation laws by the Federal government in the 1930's forced the establishment by the State of an Unemployment Compensation Commission.

There has been some effort on the part of the State to curb the operations of labor unions. In 1947 the legislature attempted to prevent the rise of labor problems by regulating labor unions and relations between employer and employees.¹¹ This act was one of the most controversial pieces of legislation ever passed by a Delaware General Assembly. It was made the target of repeated attacks by organized labor, and finally, caught within the meshes of an intense partisan battle for the control of the legislature in 1948, it was repealed.

The state labor act of 1947 had tried to imitate the Taft-Hartley Act established at Federal level. Mass picketing, the secondary boycott, and the sit-down strike were outlawed. The slow-down was declared illegal. Any misdemeanor committed in connection with any controversy as to employment relations was itself made a misdemeanor. It was unlawful for any person to use profane, insulting, indecent, abusive, or threatening language toward any other person for the purpose of inducing such person to quit his or her employment, or to refrain from seeking employment or to join a labor organization. The photographing of anyone involved in a labor controversy without his consent was declared unlawful!

The check-off was declared illegal unless done under court sanction. Strikes were unlawful unless authorized by a majority vote of the employees in the bargaining unit involved, which vote had to be taken by secret ballot at a special meeting for which due notice had been given. Labor organizations were capable of being sued for contract violation with resultant damages enforceable only against the organization. The power of injunction was strengthened. All labor organizations were compelled to register certain information with the secretary of state and to make periodic reports to this officer. All union officers had to be elected at least annually. Quorums for labor union meetings were set at majority or better, and other internal arrangements for the operation of unions were enacted. Communists and ex-convicts were prevented from serving as union officers, and no union could run a hiring hall.

The unions referred to the law as a "slave labor act," and it brought forth the strongest condemnation from the union leaders. The Delaware Labor League, a state-wide American Federation of Labor organization, resolved that it would for the first time espouse a political party at state level. Accordingly, it supported the Democrats in the election of 1948 and carried on a forceful campaign in behalf of that party.

The election of that year resulted in placing the Democrats in control of the governorship, but not in the legislature, which was controlled by the Republicans by a majority of one in each house. Yet it was felt among many of the Republicans that continued support of the act would be politically foolish, and action for repeal succeeded.

The upshot of the passage of the act and its repeal was a sense of disquietude within the ranks of both parties as to whether labor should or should not be courted. The general impression was that some kind of legislation concerning labor-management relations should have been passed and that this could have been done with labor union support if approached in the proper manner. There was some feeling that any law dealing with labor controls should cover local fair employment practices and that a more liberal approach be taken toward conditions governing female and child labor. It was felt further that any labor act should set up a state department of labor. The limited power and duty of the Labor

Commission had long been a reflection of the inattention given by the state government to the administration of labor relations. The difficulties arising from the State Labor Relations Act of 1947 were due in no small part to the absence of a strong administrative agency, which, if it had existed, would have probably prevented the passage of such controversial legislation.

WORKMEN'S COMPENSATION

The original Workmen's Compensation Law in Delaware was passed in 1917. Prior to that enactment there had been no systematic effort to protect workingmen against injuries sustained in the course of their employment. Master and servant common law rules prevailed, and the rigorous application of the common law was partly responsible for the passage of the Workmen's Compensation Act. However, the major factors that influenced the enactment were the demands of workingmen's organizations and the general trend throughout the Nation that had culminated in industrial accident legislation in most of the states. Delaware was among the last of the states to enact workmen's compensation.

The Workmen's Compensation Act established the Industrial Accident Board which has been mentioned above. This board is a quasi-judicial body, hearing and adjudicating cases involving industrial accidents. Appeals lie with the superior court.

The Workmen's Compensation Act made compensation under the statute the exclusively remedy for personal injury or death by accident arising out of and in the course of employment under state jurisdiction regardless of the question of negligence. The statute does not apply to employer and employee in any employment in which less than three employees are engaged. It is not applicable to governmental employment unless elected by certain designated officials. Farm laborers and domestic servants are not covered.

Although the General Assembly has not provided adequate staffing in terms of the tremendous increase in industrial employment in the State, the agency has been able to effect close liaison with the insurance companies covering accident contracts. The companies maintain careful inspection of premises, and in this manner help to cut down the accident rate. Several of the larger industrial plants have first class safety programs of their own. The Industrial Accident Board is not required under the law to carry on the inspection of working conditions; its chief function is judicial in nature, that is, to determine whether claims arising from injury are legitimate. All employees are required by law to report directly to IAB injuries occurring to workers in their employ, but the worker himself must take the initiative in filing claim.

When an injury is sustained the worker reports for medical attention

either to a physician of his choice, to the physician of the firm in which he is employed, or to one selected by the insurance company covering the contract of compensation. Claim is then made under the act. Benefits range from a minimum of \$15 to a maximum of \$30 per week, being 60 per cent of a worker's regular pay until the maximum is reached. Wages of less than \$15 weekly would bring full reimbursement in the event of a claimable injury. Medical services are offered by the employer, but the employee may engage his own physician.

In the event of permanent injury the following compensation is made:

1. loss of hand, 60 per cent of wages during 200 weeks.
2. loss of arm, 60 per cent of wages during 220 weeks.
3. loss of foot, 60 per cent of wages during 150 weeks.
4. loss of leg, 60 per cent of wages during 220 weeks.
5. loss of finger, 60 per cent of wages during 35-60 weeks.
6. loss of eye, 60 per cent of wages during 125 weeks.

In event of death from compensative injury, dependents receive from 15 to 65% of wages of deceased for period of 312 weeks. Burial expenses to amount of \$225 are covered under the insurance.

In 1947 the General Assembly passed the Second Injury Fund Law¹² by which special accounts are set up derived from small payments made by all employers. If a second injury is sustained and the claim warrants greater payment than when a similar injury was sustained for the first time, then the worker is paid from the second injury fund. This prevents a heavy burden being placed upon an employer who might hire a worker who had lost an eye or limb in a previous accident and then suffer similar injuries in the new employment. All employers share the cost in cases of this nature rather than the employer involved. The result has been that no "employer is discouraged from giving needed work to handicapped workers by fear of extremely high charges in the event such a person is injured on the job."¹³

Awards made by the Industrial Accident Board are considered final in the absence of fraud, and either party may appeal to the superior court from such decision. The court, upon taking a case, may reverse the ruling of the board both as to the law and as to the facts. This is a serious defect in the present law because it often throws the burden of detailed investigation upon the court, particularly when the judges must hear the cases *de novo*, which means that the hearings must be held all over again, thus reducing the board to preliminary status. There is evidence that recently, however, the courts are accepting the facts presented by the agency hearings and merely ascertaining whether procedural due process has been followed in those hearings.

Under the statute a claimant must make known his claim within fourteen days after the accident has occurred or it is estopped, except where

it is physically or mentally impossible to give such notice, in which case the time limit is extended to ninety days. In cases of occupational disease notice, to be effective, must be given within a period of five months after the date when the employee had ceased to be subject to exposure to such disease. Any refusal on the part of an employee to submit to a medical examination deprives him of compensation.

In the event there is a dispute concerning medical testimony, the appellate court may appoint one or more impartial physicians to examine the injuries of the claimant and to make report to the court. Commutation of compensation is permitted under statute the sums being discounted at 5 per cent interest. Commutation is at the discretion of the board.

EMPLOYMENT SERVICE

The passage of the Federal Social Security Law in 1935 had as one of its result the creation of state unemployment compensation agencies operating under Federal and state legislation. In 1937 the Delaware General Assembly enacted the present unemployment compensation law stating that "economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people." Involuntary unemployment was made a subject of public interest which required "the legislature to prevent its spread and to lighten its burden." Two methods were to be used to attack the problem. First, there was to be some effort to help people gain jobs, and second, in the event of job loss, some form of insurance was to be established to provide a temporary means of sustenance until a job could be found. These two methods are at the core of operations of the Unemployment Compensation Commission, the agency instituted for the execution of the Unemployment Compensation Law.

The State Employment Service

The Delaware State Employment Service is an integral part of the Unemployment Compensation Commission. This service was organized to be consistent with the provisions of the Wagner-Peyser Act of 1933. During the war years, 1941-45, public employment services were absorbed by the Federal government and operated under the United States Employment Service. In 1946 this service was returned to jurisdiction of the states, where it now rests.

The task of the service is to bring employers who need workers in contact with those needing jobs. Finding the right job for the right worker and satisfying the employer is the joint function of the Employment Service. Tests are given to applicants when it is necessary to determine the aptitude of the particular job seeker. Counselling service is provided when needed. Many Delaware employers have developed the habit of seeking their workers through the channels of the public employment serv-

ice, and the record of satisfactory placement is good. By cooperation with the Vocational Rehabilitation Service the State Employment Service has been able to fit many handicapped people into satisfying jobs. Workers needed in other states can be recruited through the local service by an interstate arrangement. Migrant labor is often supplied through this means. The costs of operating State Employment Service are met by the Federal government, but the administrative control rests with the State.

Licensing of Private Employment Offices

Any employment agency operating for profit within the State must take out an annual license in the amount of \$10.00. The Unemployment Compensation Commission issues rules for the conduct of such private agencies, and these rules have the force of law. Infractions are punishable by fine. The commission may inspect and audit the books of any such private employment service.

Unemployment Compensation

The funds for meeting the cost of payments made to unemployed workers is obtained from a tax upon employers based on their payrolls. This is the method decreed by the Federal Social Security Law. Under this act the state governments are encouraged to set up the machinery for the enforcement of the Federal provisions, which provisions are adopted by state law. In 1937 Delaware enacted the state Unemployment Compensation Act,¹⁴ which established the Unemployment Compensation Commission. Industrial and office workers and some persons engaged in trade are covered under the act. The state law is amended from time to time to meet the amendments made in the Federal statutes. Benefits paid under this system in Delaware are "payable only when a person is out of work due to no fault of his own." Strikers are not given benefits under the Delaware statute. Furthermore, he must be ready to work if a job is offered him "for which he is reasonably fitted."¹⁵ Benefits range from \$7.00 to \$35.00 weekly depending upon the worker's former earnings. Payments may be received from eleven to twenty-six weeks within any fifty-two week period. There is no tax placed on the employees, the employers absorbing the entire amount. The standard tax is 2.7 per cent of the wages of the employee up to the first \$3,600 received in a year. The tax rate is reduced if the employment record of the employer is good. This is a decided factor in maintaining a stability in employment. Approximately 14,000 claims a year have been filed under the provisions of the unemployment insurance law during the period 1950-54. Much more is collected in taxes than have been paid out, with the result that the reserve which the State maintains is fairly large. Nearly \$3.5 millions were paid out in benefits in 1952.

Administrative Procedures. The Unemployment Compensation Com-

mission is given regulatory power to effect the stipulations of the unemployment act, such as defining eligibility. However, any changes in contribution or benefit rates recommended by the commission must be enacted by the legislature in order to be effective. The commission forces employers to keep true and accurate work records, and these records are subject to inspection by the commission. All information so obtained remains confidential except where its presentation is necessary in the settlement of a claim. The commission has recourse to any court of the State to enforce its requests for information concerning the employment record, wages, and so forth, concerning a worker; immunity is granted under statute with respect to testimony forced in this manner. In the administration of its duties the commission is permitted to use a certain percentage of the taxes collected by it, such use being a substitution for Federal grants-in-aid made under the Social Security Act for such administrative costs.

Appeals may be taken from any ruling by the commission to the Superior Court. No additional evidence may be received by the court in such an appeal, but the court may order additional evidence to be taken before the commission and a rehearing of the case shall be held.¹⁶ In general, in any judicial proceeding arising from an appeal, the findings of the commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law.

In respect of the administration of the unemployment law provisions, Delaware has been extremely fortunate in having had the continued service of a corps of experienced personnel in this agency since 1937. The commission is extremely well run, and it has the approbation of both employer and employee groups. Partisanism has been removed from its internal administration. Both Democratic and Republican governors have seen fit to continue the present chairman of the board in his position.

NOTES

¹ *County Data Book*, 1949, p. 100.

² *The Migratory Labor Problem in Delaware*, United States Department of Labor, Women's Bureau, Bulletin no. 185 (1941). There were 2,000 migratory workers in Delaware in 1940. In 1950 there were approximately 4,000 of these workers.

³ Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), II, 561.

⁴ See *Wilmington Sunday Star*, April 26, 1953.

⁵ See *Wilmington News*, September 19, 1952.

⁶ See *Wilmington News*, August 29, 1952.

⁷ See statement by state chairman of the Congress of Industrial Organizations, Political Action Committee, in the *Wilmington News*, September 28, 1948.

⁸ See *Wilmington News*, April 11, 1953. There had been a similar proposal in 1953; see *Wilmington Journal-Every-Evening*, February 5, 1953.

⁹ *Revised Code of Delaware* (1953), Title 19, ch. 1-5.

¹⁰ *Revised Code of Delaware* (1953), Title 11, sec. 432.

¹¹ 46 *Delaware Laws* 196 (1947).

¹² 46 *Delaware Laws* 26 (1947).

¹³ C. Liberman and J. Rosbrow, *The Delaware Citizen*, (Wilmington, 1952) p. 237.

¹⁴ 41 *Delaware Laws* 258.

¹⁵ Liberman and Rosbrow, *op. cit.* p. 234.

¹⁶ *Revised Code of Delaware* (1953), Title 19, sec. 3354.



CHAPTER 20

Regulation of Business and Industry

THE STATE GOVERNMENT in Delaware has not interfered to an appreciable extent with industry. Although the regulation of railroads came quite early, other public utilities received little control until rather recently. The Board of Health has long had the power to inspect the manufacture of certain products to see if proper sanitary measures are adopted and followed. Both this agency and the agricultural board are interested in the operations of dairies and creameries. Control over working conditions, as noted in the chapter on labor, are rather nominal. The tax structure of the State has been on the whole favorable to business, as witnessed by the fact that corporate income has remained free from levy.

In spite of the tendency toward *laissez faire*, however, the State has had to establish regulations in several different areas of business activity. Chief among these are the liquor industry, public utilities, banking, and insurance. Each of these is under the supervision of a state administrative agency.

GROWTH OF BUSINESS AND INDUSTRY

Urbanism and Industrialization

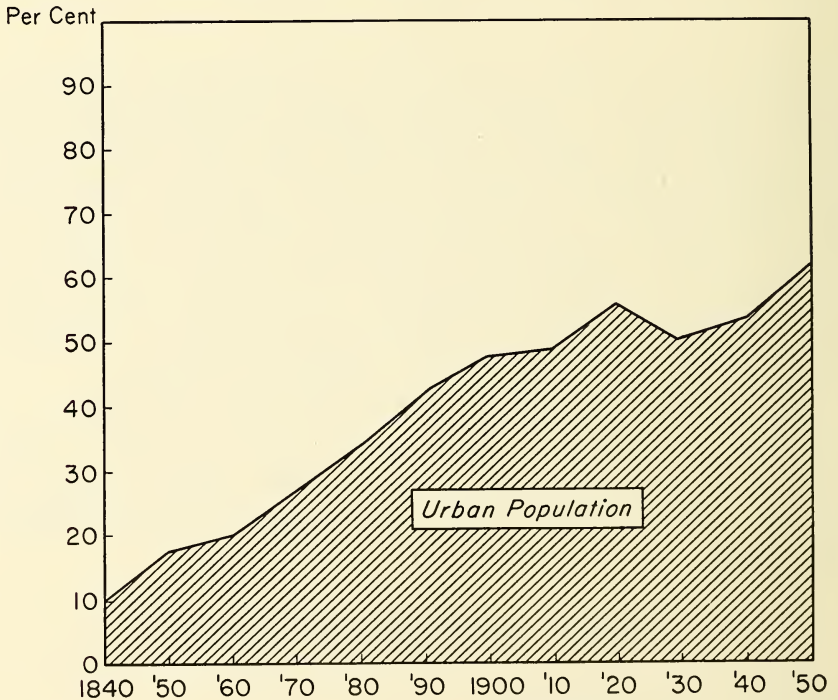
The growth in urban population and the increased proportion of that population in the total citizen body is the most apparent manifestation of the changes that have occurred in Delaware society. In 1840 there were only 8,367 people living in communities of 2,500 persons or more out of a total population of almost 79,000. In 1920 the year the rural lead was

lost, there were 120,000 in the urban centers and 102,000 in the rural areas. In 1950 the urban figure stood at 199,000 whereas the rural population was 119,000. The chart below shows the urban-rural ratio over the past century.*

When it is remembered that the total rural population consists of both farmers and non-farmers, Delaware today is definitely not agrarian.

Another indication of the tremendous increase in the industrial activity of the State is found in the rapid growth of labor unions. Unionization of itself is not a definite sign of industrialization, but the rapid rise of the industrial unions has been concomitant with an increase in the worker class in Delaware.

Although comparisons of census figures are often difficult because of the failure on the part of the Census Bureau to maintain the same categories from period to period, some indication of the occupational changes effected over the past decade can be observed in the percentage distributions among the several worker groups.



GROWTH OF URBAN POPULATION OF DELAWARE, 1840-1950

* It should be noted that the Census classification of "rural" changed in the 1950 enumeration. Those who live in towns of 1,000 or less are termed rural. Those in the large suburban areas are listed as rural non-farm unless the places have been incorporated or designated as unincorporated "towns." 52,000 of the "rural" population are listed as "rural non-farm."

TABLE 18

PERCENTAGE OF WORKERS EMPLOYED IN MAJOR OCCUPATIONAL GROUPS
DELAWARE, 1920-1953

<i>Occupation</i>	<i>1953</i>	<i>1940</i>	<i>1920</i>
Professional-technical	10.3	8.6	4.6
Farmers	9.4	13.6	19.4
Industrial and crafts	47.1	39.4	37.9
Clerical	12.6	10.6	9.0
Service	11.1	12.0	9.2
Miscellaneous	9.5	15.8	19.9
TOTAL	100.0	100.0	100.0

Although the increase in percentage in industrial operatives is partly offset by a decline in the percentage of laborers, it appears that increases in the number employed in clerical positions and in the crafts indicate a growth in the general classification of workers engaged in business and industry. This observation must also be considered in light of the decided decrease in the percentage of those engaged in agriculture.

One further factor in the trend toward industrialization is the decrease in the so-called independent small single-unit type of enterprise and the increase in the large multiple-unit type business organization. In 1929 there were 355 of the single-unit type businesses whereas in 1939 there were 302. On the other hand the multiple-unit organization numbered ninety-five in 1929 and 127 in 1939. Roughly speaking the latter unit is the big corporation while the single-unit type is the small business firm. Business in Delaware is becoming consolidated and is moving toward bigness. Yet until the 1920's, the bulk of Delaware business was still the affair of small entrepreneurs of middle-sized corporations.

With the exception of the Du Pont Company and two or three other nation-wide organizations, industry was largely locally owned and managed. The manufacturing interests in Wilmington and vicinity had been established long before the dawn of the twentieth century. Beginning shortly after the Civil War, business, particularly in its manufacturing aspects, assumed a greater share of the occupational activity of the citizens in the northern section of the State. In the year 1860, there were over 600 "factories" in all Delaware, 380 of them in New Castle County.¹ The types of manufacturing were extensive, ranging from the building of iron ships to the making of candy and other delicacies. According to a report from the Board of Trade, a local promotional organization, Wilmington in 1868 led the country in the number of iron vessels manufactured; second in the number of carriages made; second in leather goods; and "excelled by few of the other cities in the Union" in the turning out of manufactures in proportion to the number of inhabitants.²

The movement away from local ownership in manufacturing began

around 1900. Consolidation took place first in the leather firms. The iron foundries and the castings mills became amalgamated with the fast-growing large-scale enterprises such as Bethlehem Steel Corporation. One writer, well-read in the commercial lore of old Delaware, commented in the 1920's that "business, which meant producing and then selling what was produced, lost us all. Our fathers' businesses were run by other men brought in from elsewhere. Our first families became absentee landlords of distant corporations instead of magnates of [their own] industries."³

The Du Pont Company

Perhaps in no other industrial activity in Delaware has there been greater movement toward bigness and consolidation than has been the case in chemical manufacturing. The earliest records of the colony located on the lower Delaware show that the manufacture of salt from sea water was engaged in to a fairly considerable degree.⁴ The tanning of leather, an activity of importance to Delaware business, was practiced in earlier colonial days. It remained, however, for the advent of powder mills along the Brandywine, for the start to be made in an industry the like of which has rarely been seen in any state. The name Du Pont is the one most associated with powder manufacture, but others of widespread fame have also been connected with the making of explosives in Delaware. Du Pont, however, was the first, and became the largest explosive concern in Delaware and eventually in the United States.

The year 1802 marked the beginning of E. I. du Pont de Nemours and company. After many vicissitudes and discouragements, enough to shake the faith of the stoutest, the company was developed. By the middle of the nineteenth century, the fame of this company was world-wide. Another fifty years was to see it on the verge of dissolution because of internal strife, but again it emerged intact, and after the reorganization, a beginning was made in the manufacture of special types of nitrocellulose for use in industry. Then in quick succession came new products, all the result of the application of chemistry to the rising needs of the American economy.

Wilmington has remained the home of the Du Pont Company, and it is here that much of the experimentation upon which has rested the success of the enterprise takes place. Today a good portion of the expenditures made by Du Pont Company for research go into what is known as fundamental or "pure" research. It is to this type of investment that Du Pont attributes much of its industrial achievement. In 1938 the company announced the development of certain synthetic superpolymers from which eventually came the product known as nylon. Large-scale manufacturing of this new fiber began in 1939, in Seaford, a town in southern Delaware. The plant there employs over 2,500 people. Close on the heels of the nylon came other synthetics, such as neoprene, a form of composition

rubber. In the meantime, work in the Du Pont Company was going ahead on the manufacture of explosives, ammonias, fertilizers, higher alcohols, acids, and food chemicals. Only three manufacturing plants and the experimental station of the company are to be found in Delaware, but the home office with its thousands of clerks and technicians and managers is located in Wilmington and in outlying New Castle County. Over 15,000 persons are employed in the company's establishments in Delaware.

It is extremely difficult to assess the political importance of the fact that a fairly large portion of the wage earners of the State are employed by the Du Pont Company. Any material change in the employment policy of the organization would affect a sizable group of the citizenry. There is no doubt that a sense of material well-being that can be directly associated with the presence of the company in the State pervades the economic and social thought of Delaware. Employees are inclined to look to the company as the directing force of their lives rather than to the local communities and the social organizations such as the Church, the club, or fraternal organization. The Du Pont Company represents something that is not capable of precise definition. *Fortune* magazine has said that "Du Pont is one of the greatest phenomena of the American industrial revolution. Its very bigness takes on symbolic proportions."⁵

The influence of the company upon government in Delaware is not overt nor direct. Members of the Du Pont family have engaged directly in politics and in government, but the company does not intrude upon the operations of the state government nor force it to adopt any particular pattern which the policy makers of the company have preordained. In fact, it might be truly said that Du Pont is too big to bother with Delaware government. The State, on the other hand, has respected the company's competency within its own field of endeavor.⁶

Although all industry in the State (including the Du Pont interests) are ever on guard against legislative onslaught in the way of taxes or undue regulations, the development of industries in the southern section of the State within the past twenty years has made the downstate politician less apt to run counter to the political attitudes of industry in respect of governmental regulation. This fact is again an earnest of the movement away from agrarian political dominance and of the arrival of new economic power bases upon which the present governmental operations of the First State rest.

DELAWARE CORPORATIONS

Besides the fact that the Du Pont Company has its home office in Wilmington, the best known fact about Delaware among out-of-staters is the fact that Delaware is the home of many corporations. Yet few persons, in or out of the State, are in possession of much information concerning

Delaware corporation law. What is known is that many corporate businesses are chartered in the State, and it is therefore assumed that Delaware has liberal corporation laws. The assumption is generally correct. Over 28,000 corporations presently call the State their home. Some of the biggest names in modern business are to be found among them.⁷

Prior to 1897, Delaware corporations received their charters from the legislature. Following serious repercussions arising from the jobbery practiced by some of the legislators in the granting of the charters, the constitutional convention of that year decreed that corporations would be chartered under a general corporation law and that special acts creating or amending charters would be invalid. Article IX of the constitution contains provisions stating that: municipal corporations, banks, corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the State, are exempt from the provisions of the general corporation law. No general incorporation law can be enacted without the concurrence of two thirds of all the members elected to each house of the General Assembly. The revocation of charters is done under general law. Foreign corporations wishing to do business within the State must have an authorized agent in Delaware for the purposes of legal service. Shares of the capital stock of Delaware corporations when owned by persons outside of the State are not subject to taxation. Corporations chartered in the state pay an annual franchise tax ranging from \$5.00 to \$50,000. In 1952 the total receipts from this tax amounted to more than \$5 million.

There is a relatively low initial fee assessed at the time of incorporation. This tax ranges from \$.01 per share up to 20,000 shares to one-fifth of a cent for each share in excess of 200,000. Certificates of dissolution are issued at nominal rates. Certain other fees are levied for the filing of reports and the processing of charter amendments.

One reason for the large number of corporations in the State is the comparative ease by which incorporation can be effected. Although all charters have to be officially granted through the office of the secretary of state, there is no need for the incorporators to appear before him. Proposed charters are carried down to Dover, registered with the secretary's office, and returned to Wilmington by an attorney, and a courier will be waiting to deliver the charter to the incorporators wherever they may be. Meeting of boards of directors or of the stockholders do not have to be held within the State. The first meeting of the incorporators does not have to be held in Delaware. Every Delaware corporation must maintain an office or place of business in the State and have a resident agent in charge, who may be either an individual or a corporation resident of or located within the State. This provision is generally met by merely listing the name of the corporation with one of several service corporations.

This means that a telephone number and address is available through which the State authorities may communicate with the corporation. These service corporations also handle routine matters connected with the filing of amendments, mergers, and so forth, which must be made known to the secretary of state.

Another reason for the concentration of chartering in Delaware is the ease with which charter amendments, mergers, consolidations can be effected. Simple forms are available for these matters, and the payment of a slight fee insures their legality. The processing of charter amendments can be effected within a day.

One further advantage of a Delaware charter is that the State's corporation law has been in existence for over half a century. It has been tested in the courts, and corporation lawyers involved in litigation in the state tribunals are able to predict with a high degree of accuracy what the courts will do in certain situations.⁸ The courts have interpreted the corporation law as liberally as reason will allow, and this judicial attitude has made the course of corporate litigation relatively clear and simple.

The administration of Delaware incorporation laws lies with the Corporation Department, an agency responsible to the secretary of state. This organization is one of the smoothest operating agencies in the State and it has remained relatively free of the political turnover that occurs quite often to an excessive degree in most other state agencies. The Corporation Department also contains the franchise tax division, a group of employees who assemble the reports of the corporations, compute the tax, and then turn over the information to the State Tax Department, which sends out the charges.

Delaware is no longer unique among its sister commonwealths in the matter of liberal incorporation laws. Several other states have entered the "charter ring," and the business of incorporation is not concentrated in the First State.* Yet many of the country's leading corporations claim Delaware as their home, and many are the meetings of directors held in Wilmington or in Dover, both partly away from the hustle and the bustle of the industrial and commercial hurley-burley that marks the trade and commerce in the large metropolitan centers of the Nation.

Intimately involved in the incorporation process is the lawyer class. The present general corporation law owes its existence to the continued and conscientious efforts of some of the State's leading attorneys. At times the lawyers are so zealous in their pursuit of the business of incorporation that they overlook the threat of Federal intervention. One of the persistent fears of some of the businessmen of the State is that the

* Recent invasion of the chartering field by District of Columbia has brought forth severe protests from the Chamber of Commerce in Delaware. See *Wilmington News*, July 22, 1953.

lawyers will ride a good thing too far and the Federal government will step in with a stiff enactment compelling all businesses engaged in interstate commerce to become incorporated under Federal statute.

Pressures from corporation lawyers to extend the liberality of the present enactment have been offset to a considerable extent by the chancellors of the State. Delaware has enjoyed the benefit derived from the presence of able equity judges in its judicial system. The role played by the court of chancery in maintaining the relative freedom of incorporation but at the same time keeping the process within reason has done much to establish an air of sanity and restraint about a process which could easily become a travesty upon the orderly conduct of business and industry.

LIQUOR CONTROL

The liquor industry is perhaps the most closely controlled business in the State. Not only are the counties permitted the right of local option under the Constitution of 1897 (although it has not been employed), but the legislature also has enacted an elaborate system of administrative regulations, which are enforceable by a special agency created for that purpose—the Delaware Alcoholic Beverage Control Commission. This commission consists of five members appointed by the governor for terms of four years each. The members receive a per diem allotment plus expenses incurred in the conduct of their office. The secretary, appointed by the commission, acts as the executive director of the agency, the head office of which is in Wilmington.

The chief duty of the commission is to control the manufacture, possession, sale, and delivery of alcoholic beverages in accordance with the prescriptions made by the General Assembly. In carrying out this task, the agency issues licenses for the manufacture and sale of alcoholic liquor. Rules and regulations are promulgated concerning the "time, place, and manner" in which liquor is sold and dispensed.

All alcoholic beverages purchased by retailers in Delaware must be obtained either through the Alcoholic Beverage Control Commission directly or from a manufacturer or an importer in the manner set forth in the rules and regulations of the agency. Thus the entire liquor industry in the State is operated under the aegis of the commission. The superior court has the power to hear appeals from decisions by the commission. In general, the judiciary merely ascertains whether the use of the rule making power by the commission has been duly authorized by the legislature.⁹

Because of the rather full authority possessed by this agency over the licensing of retailers and local private organizations such as hotels, clubs, fraternal societies for sales of liquor and other alcoholic beverages, the state agency in control of alcoholic beverages is constantly in the lime-light of politics. It has been held that partisan politics have entered into

the decision-making and that the commission has been so attentive to the demands by the churches that the liquor industry be seriously curtailed.

REGULATION OF PUBLIC UTILITIES

In addition to regulating the liquor industry, the State exercises control over public utilities. This control, however, is much less complex and much less rigorous than the regulations applied to the liquor industry.

Railroads are among those utilities that have had the most sustained public regulation. In the late 1870's, attempts were made to establish a railroad commission. The State Board of Agriculture, when formed under the Constitution of 1897, was thought to be the agency that would have authority over railroad rates—an earnest of the close connection between farmers and shipping tariffs. The constitutional convention of that year decided against giving this power to the agricultural board.* The General Assembly since the close of the Civil War has enacted statutes setting certain limitations upon the operation of railroad lines in the State. Since the 1890's, most of the enactments have been directed against actions of the railroads that would endanger the safety and well-being of the State's inhabitants.

In the first years of the twentieth century, the General Assembly passed laws for the incorporation of the railroad companies.¹⁰ Prior to 1899, incorporation had been by special act. Today any nine persons may form a corporation to operate a steam railroad, and any five persons may form a corporation to run a "railway," that is, a system of transportation using electricity, cable or motor (gasoline) for propulsion of cars upon rails.¹¹ The law is not clear as to which chapter a transportation company comes under if it uses both steam and other means of energy in the propulsion of its vehicles. Under the railroad legislation, the General Assembly has provided for segregation of the races, but no attempt is made in Delaware to enforce this statute.¹²

Although railroads, steamships, and railways (trolleys, cable cars, and so forth) have been subject to regulation for the past half century in Delaware, and although there had been a municipal utility commission with jurisdiction in the city of Wilmington since 1911, the State did not have an agency charged with the regulation of utilities until 1949. In that year the General Assembly established the State Public Service Commission.¹³ This commission consists of three members appointed by the governor for a term of six years. Each county is represented by one person, and not more than two members come from the same political party. An annual salary of \$4,500 is paid to each member.

The commission has general supervision over and the power to regulate

* Certain powers over railroads existed in the overseers of the hundreds as early as 1869. 13 *Delaware Laws* 486. These officials have long since been abolished.

all public utilities, which term includes every individual, partnership, association, corporation, or other agency (including cooperatives) that operate any railroad, street railway, motor bus, trolley, taxicab, truck, express, steam, manufactured gas, natural gas, electric light, heat, power, water, telephone or telegraph service, system or plant for the public use. The commission has no authority over any municipally-owned public utility. The power to fix rates rests with this agency, and it has the right to inspect the books of any public utility company. The commission may, after hearing, by order in writing, fix reasonable standards, classifications, regulations, practices, measurements or services to be furnished, observed, or followed thereafter by any public utility. The question of what are "reasonable" standards apparently rests ultimately with the courts inasmuch as appeals may be taken to the judiciary from any final order issued by the commission. This rule also applies whenever the commission refuses a certificate of public convenience and necessity to an applicant wishing to begin the business of a public utility, but so far the courts have not reversed any such findings.

So far the commission has not been called upon to issue many regulations inasmuch as most of the public utility companies doing business in Delaware come under Federal controls or have been regulated by neighboring state public utility boards whose orders have been accepted by the Delaware board. In fact, the charge has been made in the legislature that the commission is overpaid and underworked. The commission has set rates for electrical and communication facilities and for taxicabs and local busses. It also has approved schedules of intrastate busses travelling between Wilmington and the downstate areas.

There have been attempts to abolish the agency, but since the commission was established it has had the support of the larger power utility companies and the larger transportation companies, who sense the need for state regulation of their fields of operation.

Instead of curtailment of utility regulation, the prospects are for steady development of this type of government-business relationship. With the rapid development of highway transportation in the State, the need for continued and increased control over truck and bus traffic will become pressing. Already plans are afoot for the expansion of electric power production in the southern section of the State as the need for industrial energy in the lower Del Mar Va area becomes evident.¹⁴ It is inconceivable that a state with an expanding industrial potential can afford to allow unplanned and unregulated activity in the central fields of utility operation.

REGULATION OF BANKING

Few titles in the Revised Code of 1953 that deal with administrative

controls over the economy run to as great a length as that which deals with banking. There are 116 pages delineating the arrangements set by the State for the conduct of the banking business. At first glance it might be inferred that such undue length is the result of unfortunate experience on the part of the people of the State with their banks. Such, however, is not the case. In the hectic days of the money panic in 1907, Delaware could boast that there had never been a national-bank failure in the State.¹⁵ Again in 1929, and in the two eventful years succeeding, bank failures in Delaware were at a minimum compared to the record in other states. One reason for this is the strong conservative aspect of Delaware business. Another and perhaps more important reason is that industrialization in Delaware did not have to go through a boom period. Economic enterprises have used the banks as credit agencies rather than as risk taking institutions.

The political and economic history of Delaware shows the banker assuming a dominant role in the conduct of public affairs. Five of the governors since 1900 have been bankers or closely associated in directoral capacity with the banking business. There has been a relatively high percentage of legislators whose chief occupations have been in this field. The Delaware Bankers' Association has been in the forefront of state administrative reform and reorganization since 1920. In a little known report of 1919,¹⁶ this association called attention to the useless offices abounding in the state government, and partly through its efforts the budgetary reform of 1921 was accomplished. This organization also was responsible for the establishment of the State Banking Commission in 1919. Before that time the inspection and regulation of banks within the jurisdiction of the State government was in the hands of the insurance commissioner, a constitutional elective officer.

Part of the explanation for the present rather lengthy legal treatment of the banking business lies in the fact that the legislature has chosen to enter into minute detail in laying down the regulations. Fear of manipulation of banks has been responsible for this situation. The General Assembly has not been content with creating a Banking Commissioner and outlining his powers; it has gone to the extreme of stating the number of deputies and examiners he shall employ. Instead of permitting the commissioner to determine whether a petition for the creation of a bank be honored, the General Assembly has established a Board of Bank Incorporation consisting of the commissioner, the attorney general, and the secretary of state. Much space is devoted in the *Revised Code of Delaware* (1953) to the exact manner in which applications for incorporation of banks shall be handled. It would appear that the banking commissioner could perform this function himself under the proper legal safeguards.

In addition to the banking commissioner and the ex officio Board of Bank Incorporation mentioned above, there is also a Bank Advisory

Board. The advisory board appoints the banking commissioner. This agency consists of the banking commissioner (as chairman) and six members appointed by the governor, no more than three of whom shall come from the same political party. Each county and the city of Wilmington must be represented on this board. The term of office is four years. Here again the legislature has created an anomalous situation by stating that this board shall assist in the administration of the banking laws in spite of the fact that the banking commissioner himself is charged with this duty. Members of the board are specifically exempted from any responsibility for action taken by the commissioner upon their advice.¹⁷

In addition to having jurisdiction over all state banks, saving fund societies, building and loan associations, and other financial corporations (except insurance) doing business in or chartered by the State, the commissioner is given authority over the small loans business. All such enterprises must be registered with him. He is charged with their supervision and examination, yet he is, by law, limited to the number of examiners and deputies he may employ. The result is that the small loan business in Delaware receives a somewhat cursory surveillance. The control over the check cashing business also rests with the banking commissioner. Because of the practical limitations involved, his supervision over these enterprises is confined to licensing. Here, however, he is given full authority to make rules and regulations governing the business. The lack of enforcement facilities again leaves much to be desired in the exercise of this authority.

Were it not for the close informal check maintained over the banking business by the Delaware Bankers' Association and the fact that the bulk of the banking business in the State has been carried on by relatively few organizations, manned by persons well-known throughout the community, the state banking agency would find itself overtaxed in enforcing the law. Once again the informality of a "friends and neighbors" economy has provided the means of control over one of the more important activities of society.

CONTROLS OVER INSURANCE

Insurance is the only business given recognition by the Constitution of Delaware. Since 1897, the insurance commissioner has been provided for in the State's basic law. In 1879 the legislature had established a State insurance department over which a commissioner presided.¹⁸ This officer was appointed by the governor; senatorial confirmation was not required. From a perusal of the statutes between 1879 and 1897, it can be inferred that the legislature was very much concerned with the operations of the insurance department. Detailed legislation was written concerning the administration of the insurance business in the State. One of

the more imposing reasons for the shift from legislative to constitutional office with respect to the commissionership was the feeling on the part of many persons that the office should be removed from politics.

If such was the belief it was an illusion because by the placing of the office within the constitutional commitments, another "line office" for which the parties would compete was created. Today the office has become a political plum, which is batted about among the hopefuls from each of the counties at the time of the state convention. The job pays rather well, the salary being \$6,000 with an additional \$2,000 for expenses. The term is for four years, and the election for the office is held in the "off year." In view of the fact that the State normally votes Republican in these elections, the office has gone to that party the majority of times.

In addition to the commissioner there is in the insurance department a deputy appointed by the commissioner. Prior to 1947, the law made no provision for a deputy, the commissioner being permitted to hire a chief clerk and one extra clerk. Because of the pressures of the office, however, the incumbent did not find it expedient to devote all of his time to routine duties and requested the appointment of a deputy. In 1947 the legislature acquiesced. The salary for this post was put at \$5,000.

The duties of the insurance commissioner revolve about the general supervision, control, and regulation of the business of insurance operated within the State. He has the power to make these rules and regulations, to issue and revoke certificates of authority, which are essential if a business in insurance is to be conducted. He must examine the affairs of domestic insurance companies, and he may investigate foreign and alien companies whenever he feels that such should be done to protect their policyholders who are residents of the State. In lieu of such an examination, the commissioner may accept the report of examination of such companies made by or upon the authority of the insurance officials of the state in which they are located. Any appeals taken from his rulings rest with the court of chancery. As is the case in respect of legislative control over the banking business in the State, the legislature has gone into considerable detail in covering the business of insurance. Several chapters in the statutes are given over to the regulations of domestic companies, the handling of life, marine, and general casualty insurance, and the conduct of mutual benefit companies and fraternal benefit societies. Particular attention is given by the statutes to the filing and determination of rates for casualty, fire, and marine insurance. In respect of rate orders made by the commissioner, the aggrieved party may demand a hearing before him. Review lies ultimately with the court of chancery. The regulation of surety companies in Delaware also rests with the insurance commissioner.

NOTES

¹ Henry C. Reed, ed., *Delaware, A History of the First State* (New York: Lewis, 1947), I, 427.

² Reed, *op. cit.*, I, 428.

³ Henry S. Canby, *Age of Confidence* (Farrar & Rinehart, 1934).

⁴ J. T. Scharf, et al., *History of Delaware to 1889* (Philadelphia, 1889), II, 1215.

⁵ *Fortune*, October, 1950.

⁶ Harold J. Laski, "The Obsolescence of Federalism" in the *New Republic*, May 3, 1939.

⁷ See *Wilmington Sunday Star*, May 31, 1953.

⁸ See article on Delaware Corporations in *Wilmington Sunday Star*, May 31, 1953.

⁹ *State v Retowski*, 36 Del. 330 (1935).

¹⁰ 22 *Delaware Laws* 166 (1897).

¹¹ *Revised Code of Delaware* (1953), Title 26, chs. 3 and 5 respectively. It is odd that this distinction is still maintained in the laws.

¹² *Revised Code of Delaware* (1953), Title 26, sec. 703.

¹³ 47 *Delaware Laws* 254 (1949).

¹⁴ See *Wilmington News*, June 5, 1953.

¹⁵ Reed, *op. cit.*, I, 432.

¹⁶ *Annual Report of Delaware Bankers' Association for 1919*, (Wilmington, 1919).

¹⁷ *Revised Code of Delaware* (1953), Title 5, sec. 307.

¹⁸ 16 *Delaware Laws* 347 (1879).



CHAPTER 21

Professional and Vocational Licensing

DELAWARE HAS over a score of agencies, operating at either state or local level, whose duty it is to police trades and professions. In this chapter we are interested in the use of the licensing power as a regulatory and control device to insure the health, safety, and morals of the citizenry. There is a vast field of licensing aimed at the gaining of revenue by state and local authorities. This aspect of licensing is purely tax-raising and does not concern us in this discussion.

Most of the regulatory licensing deals with health services such as the medical and surgical professions, optometry, pharmacy, chiropractics, dentistry, nursing, and nursing homes. Regulation of such trades as barbering and undertaking also might be included in this category. In addition, the professions and trades concerned with building, sale of real estate, engineering, transportation, and certain sporting events, are subject to the licensing power of the state because of the need to protect the public in these areas of operation. The maintenance of a properly trained and responsible lawyer class has brought into being the Board of Bar Examiners. Teachers in the public schools must be certified.

Although the public safety is the basic motivation behind the establishment of licensing and examining boards, another motivating factor is the desire of each profession and trade to maintain its respective standards. Examining and licensing the prospective members of these groups serve to eliminate the incompetent and untrained, thus protecting the public from quacks and reserving the opportunity for serving the public to those who are within the guild.

DEVELOPMENT OF THE LICENSING SYSTEM

History

Professional licensing had its real start in Delaware during the last quarter of the nineteenth century. Prior to that period there had been a few sporadic attempts to control locally the medical and health services. Although the licensing of physicians was inaugurated in the First State as early as 1819, it was not until the late 1880's that anything approaching the modern system of professional examining boards made its appearance. The beginning of the current century saw an increasing number of laws dealing with the examination and licensing of pharmacists, nurses, osteopaths, optometrists, and dentists. The establishment of an examining board for undertakers was enacted in 1907. Veterinary medicine was placed on the licensing and examining list in 1901. The Board of Bar Examiners charged with the testing of all applicants to the bar was established by the rules of the supreme court in the 1920's; prior to that time bar examinations were held by separate boards in each of the three counties.

As the economy of the State expanded several of the trades and professions turned to the legislature requesting enactment of laws compelling examination and licensing in their respective crafts. Engineers, surveyors, realtors, beauticians, electricians, and others have sought to have examining boards created governing admission to these employments. Some have been successful, others have not. Engineers, surveyors, real estate men now must be certified before practicing. The law to include beauticians within the power of professional licensing was declared unconstitutional by the courts,¹ as was the statute requiring license to conduct the cleaning and dyeing business.² In both instances the court held such regulations contrary to due process. The attempt to require electricians to come before an examining board before gaining a license to practice their craft was defeated in the house as late as 1953.³

Present Scope

Examination and licensing of applicants are required in twenty-seven professions and crafts at state level. Licensing of plumbers is required at county level. Pawnbrokers, junk dealers, and dealers in old precious metals and stones are required to take out state licenses and be subject to the surveillance of state and municipal police at all times. In all cases where the practice of a profession is contemplated, the successful completion of a regular examination is prerequisite to the granting of the license. The list below indicates the agencies authorized to hold examinations and/or grant professional licenses within the State of Delaware:

PROFESSIONAL LICENSING AGENCIES IN DELAWARE

State Board of Accountancy	State Board of Health
Delaware Aeronautics Commission	Delaware Racing Commission
State Board of Examiners and Registration of Architects	Delaware Harness Racing Commission
Board of Bar Examiners *	State Board of Medical Examiners
State Athletic Commission	Board of Examiners of Graduate Nurses
Board of Examiners of Barbers †	State Examining Board of Physical Therapists
State Board of Chiropody Examiners	State Board of Pharmacy
State Board of Chiropractic Examiners	State Board of Pilot Commissioners
State Board of Dental Examiners	Board of Examiners in Optometry
State Board of Education	State Board of Examiners of Undertakers
State Board of Registration for Professional Engineers and Land Surveyors	State Highway Department (taxicab drivers)
State Board of Veterinary Medical Examiners	
State Police (for private detectives)	

ADMINISTRATIVE ORGANIZATION AND PROCEDURE

The Boards

In general, the statutes providing for the licensing of trades and professions have established boards composed of persons, appointed by the governor, who have been recommended for appointment by the professional associations connected with the occupations for which examinations and licensing are required. The Board of Bar Examiners stands in slightly different position from that held by other professional licensing agencies in that it is not provided for in the statutes. This board is appointed, under rules of the supreme court, to provide regulations and to administer examinations for admission to the bar of the State. Appointments are made by the justices of the supreme court. The term is seven years, staggered, and there are seven members.

The average membership on each statutory board is five, and the term averages four years; the lowest being two and the highest, five years. All of the board memberships are composed of professional personnel. There is no stipulation regarding party membership in connection with these boards, except in the case of the Board of Registration for Professional

* Under rule of Supreme Court.

† For city of Wilmington only.

Engineers and Land Surveyors in which not more than four members may come from one party. Usually there is no residence requirement other than that the members must be citizens of the State of Delaware.

Financing the Boards

Members of nine of the boards receive a per diem remuneration for the days in attendance upon the meetings of their respective boards; the rest receive only expenses connected with their functions. In all cases where candidates make application for examination and license there is a fee attached. The fees range from \$10 to \$50 with a \$25 fee being the most common. Re-examinations are permitted (usually two in addition to the original examination) and the re-examination fees are usually lower than the original fee. Permission to take a re-examination must be obtained from the examining board.

Except for expenses incurred by the members of the several boards in the course of their duties and for the per diem allotments offered in several instances, the State makes little provision for financing the boards. Most of the boards use the public buildings for the conduct of the examinations. Secretarial help is supplied in nominal amounts and the cost is met by proper warrant drawn on the state treasury. Fees from the examinations are paid to the state treasury in the majority of instances. Only two or three boards are permitted to retain the fees obtained from the licensing and examination procedure.

EXAMINATIONS

Before a license may be issued to a person to practice the professions of medicine, nursing, dentistry, law, pharmacy, optometry, chiropody, chiropactics, or veterinary medicine in Delaware an examination testing his competency in his chosen field must be successfully completed. The right to practice some professions is granted upon the presentation by the applicant of documentary evidence of his qualifications. Public school teachers, for example, are certified by the State Board of Education upon the presentation of diploma from an accredited teacher training institution; no examination is required. In order to be certified as a public accountant a person must apply for and successfully complete an examination in the general field of accountancy. To practice the trades of undertaking and barbering an examination must be taken and passed. Several of the crafts require examination before one is admitted to their pursuit. In some trades and crafts, however, a license will be issued without any proof of competency, and in these instances the licensing is merely a means of raising revenue for the State or county.

Examinations are of three types—written, oral, or practical, or they are a combination of all three. For the most part the examination is written,

based upon the theory and general knowledge of the subject field. Oral examination may be required; if it is it is done to gain some knowledge of the personal characteristics of the applicant for the purpose of seeing whether he will meet the needs of his proposed profession or trade. Usually in a profession or craft where mechanical operations are of primary importance, a practical examination is required in addition to the test in theory. For example, optometrists, before receiving license, must pass a theoretical examination and give a practical demonstration of their competency.

The examinations are held under the provisions of the statutes that have established them. In the majority of cases the law requires that an annual examination be offered for admission to a profession or trade. Most examining boards hold semi-annual tests, and in a good many instances the boards will arrange special examinations if the number of candidates warrant them.

The examining boards usually are not involved in the training of those appearing before them. However, in the case of the Board of Pilot Commissioners, the training of an accepted applicant, when he serves as an apprentice, is supervised.⁴

Examinations for Medical and Osteopathic Physicians and Surgeons

The examination and licensing of physicians, osteopaths, and surgeons in Delaware is under the general direction of the Medical Council of Delaware, which consists of the president judge of the superior court, the president of the state board of medical examiners, and one person chosen by the state board from among the membership of the Medical Society of Delaware. The Board of Medical Examiners consists of ten members, all appointed by the governor upon the recommendation of the Medical Society of Delaware. Osteopaths are examined by the Medical Council and an osteopathic physician designated by the Delaware State Osteopathic Society.

The examinations for both medical doctors and osteopaths must include questions in anatomy, physiology, hygiene, chemistry, surgery, obstetrics and gynecology, pathology, practice of medicine and pediatrics, and diagnosis. In addition the medical doctor is examined in therapeutics and the osteopath in practice of osteopathy. The results of the examinations are transmitted to the Medical Council. The fee for the examination is \$25. If the applicant is successful in the examination he is recommended for certification by the Medical Society. Certificates may be refused upon specified grounds by the Medical Council even though the examination is passed. In addition to certification the physician is also required to have a state license issued by the State tax commissioner. Any applicant examined and licensed by the proper authorities of another state may apply for license to practice medicine and surgery in Delaware upon the pay-

ment of a fee of \$100 to the treasurer of the Medical Council, without further examination by the examining boards of Delaware.

The Bar Examination

All applicants for registration as students of law as well as those applying for admission to the Delaware Bar must file with the Board of Bar Examiners. Applicants for registration as students of law must also take a qualifying examination known as the Law School Admission Test, which is given by the Educational Testing Service of Princeton, N. J. The Board of Bar Examiners also require that before a student attends a law school he shall be prepared in the following subjects: English Literature, American and English History, General History, Geography, Arithmetic, Algebra, Plane and Solid Geometry, Latin, and French, or German or Spanish.

Applicants for admission to the bar must certify that they have studied the principles of law and equity under a preceptor's personal direction (reading law), or have pursued the study of law for at least three academic years at an approved law school and have been regularly graduated therefrom. All applicants for admission to the bar must pass the bar examination.

The examination for the bar is conducted under the direction of the Board of Bar Examiners and consists of forty questions designed to cover the whole field of law and equity. There are six groups of questions and three hours are given for each group. The following subjects must be covered in the examination: Equity, Evidence, Torts, Rules of Civil Procedure for Delaware, Common Law Pleading, Federal Rules and Procedure, Criminal Law, Contracts, Property, Corporations, Constitutional Law, and Canons and Professional Ethics of the American Bar Association.

In addition to successfully completing the above examination the applicant must also serve a specified period as a clerk in a law office before being admitted to the bar, which admission is an action of the supreme court of the State. Attorneys from other states may, upon presentation of satisfactory credentials, be admitted to practice before the Delaware Courts and be admitted to the bar of this State provided they have bona fide residence in Delaware.

Examinations for Dentists and Oral Hygienists

The practice of dentistry in the State of Delaware is possible only upon the successful completion of an examination followed by certification given by the Board of Dental Examiners, or upon presentation of evidence that applicant has been qualified to practice in another state. The board consists of five members appointed by the governor from among citizens who are active and reputable dentists. The term of office is four years.

Recommendations for appointment are made by the Executive Council of the Delaware State Dental Society.

Applicants must be graduates of an approved school of dentistry and must have successfully completed two years of an approved college course. The examination consists of written and oral parts and a practical demonstration of competency. The fee for the examination is \$50.00.

Any female person of good moral character who is over the age of eighteen years who desires to register as an oral hygienist must give proof that she is a graduate of an approved high school and of a training school for oral hygienists. Examination is then required before registration is granted. Practicing oral hygienists from out of state are admitted to practice upon presentation of satisfactory evidence that they are qualified and have been admitted to practice in another state.

The basic science examinations required of all candidates in dentistry are given in Delaware by the National Board of Dental Examiners. Delaware is one of thirty states that uses the national examining board to determine the qualifications of prospective dentists with respect to their knowledge of pathology, histology. These examinations are written, and they are marked by the national board. There is an oral examination which deals mainly with the use and interpretation of x-ray. This examination is given by the Delaware Board of Dental Examiners, as is the examination involving a practical demonstration of the applicant's operative skill. The Delaware board makes the final recommendation concerning the candidate's right to practice dentistry in this State.

THE REGULATION OF PRACTICE

In addition to having the task of examining and registering applicants for admission to the several professions the state examining boards, in most instances, have the duty of policing the professions by surveillance of the conduct of the membership.

Statutory Provisions

In practically every case where a statute has established an examining board the law also provides that the board shall keep a constant check upon the professional activities of the members of the respective profession. Revocation of license may ensue if the licensee is given to perpetual inebriation, is convicted of a felony involving moral turpitude, or brings discredit upon his profession. For example, the Medical Council may refuse to issue a certificate for the license to practice medicine and surgery before the examinee enters upon his profession and it may revoke the license once it is issued if the licensee has made material misrepresentation of facts in his application, is subject to chronic and persistent inebriety,

has practiced criminal abortion at any time in his career, has been convicted of a crime involving moral turpitude, has attempted to advertise or has advertised special ability to treat or cure chronic incurable diseases. In all cases the accused has a right to a hearing before the Medical Council and may be represented by an attorney.

Disciplinary Actions

Revocation of license, under proper safeguards of the law, is the most drastic sanction that an examining board has over the members of a profession, but other less stringent forms of disciplinary action may be taken. Suspension of license for a definite period is one possible action, and refusal to renew registration where renewal is required (as in the case of graduate registered nurses) until satisfactory explanation is made for alleged misconduct is another. Rebukes and formal reprimands may be addressed to a member of a licensed profession whose actions have merited the displeasure of the examining board. Informal warnings may be given from time to time if certain practices appear to be deleterious to the good name and reputation of the profession.

Unauthorized Practice

In all cases where licenses to practice a profession are required there are penalties for practicing without a license. The enormity of the offense is determined by (1) the nature of the profession, for example, the unlicensed practice of medicine and surgery is punishable by a harsher penalty than is the unlicensed practice of veterinary medicine and (2) by the nature of the offense, for example, if misrepresentation was involved in the procuring of a license, the license is rendered null and void.

Certain professional acts are prohibited under criminal law and some are enjoined under the license and registration acts. Medical men, for example, are prohibited from performing criminal abortions; the penalty for this is revocation of license and possible jail sentence. Optometrists may not engage in mail-order or department store practice in the course of their professional activities. Pharmacists may not sell certain drugs without prescription from a licensed physician. In cases where the state agency in charge of registration is empowered to make rules and regulations governing the conduct of a certain trade or profession any breach of these rules may result in the revocation of license or in fine, or in a reprimand.

PROBLEMS IN LICENSING ADMINISTRATION

There are at present some difficulties in the administration of licensing. One of the major difficulties is the lack of unified procedures for the con-

duct of examinations. Much of the work of examination is done on a voluntary basis by the members of the boards. This work places a tremendous burden upon busy men whose competence is in part indicated by their being busy, yet it is these very men who are called upon to do the examining. In connection with the examinations there is a great deal of paper work which should rightfully be handled by clerks, yet the law makes little or no provision for clerical help. The maintenance of records is often haphazard, again because of lack of clerical help. Further, there is a dearth of information as to the requirements of some of the boards concerning the registering for and taking of examinations, and again the lack of ready information is due to a great extent to the lack of clerical assistance. The proposed plan for the reorganization of state administration presented in 1950 suggested that the several examining boards be relieved of "all strictly administrative duties in the processing of papers, and enforcement of laws, rules, and regulations."⁵ The boards, under this scheme, would have had the responsibility only for policy making and would have merely rendered technical assistance in the formulation and conduct of examinations. They would have heard appeals from the rulings affecting practitioners or applicants in the respective professions and occupations, which rulings would have been made by the director of the proposed Department of Economic Development.

The proposed plan failed of acceptance; the failure may, in part, be attributed to the fear by some professional people that much of their control over their respective groups would have been eliminated if the several examining boards were placed in a general administrative agency such as the proposed Department of Economic Development.

There is little doubt that some of the professional men tend to use the boards to maintain a guild, thus controlling admissions to their respective professions. There have been charges made from time to time by disgruntled applicants that certain professions are "hard to crack" because of guildism. Usually these charges are unfounded, but it would be in the public interest to remove the examining boards from the influence of the professional groups they represent, or at least, if this is impractical, to bring in some representation from the general public. It would be unfortunate in these days of growing public interest in the professions such as medicine, dentistry, and law if the public is excluded from their inner workings. For example, there is a developing interest on the part of the public in the qualifications, examination, and registration of teachers in the schools of the State, and much of this interest has been salutary to the teaching profession. There is some evidence of a growing public interest in such questions as: the number of physicians available in a given locality, the number of dentists and nurses available, and the adequacy of their training and professional understanding in light of modern scientific

knowledge. Careful attention on the part of the examining boards has long been paid to the suppression of quackery and charlatanism, and the public appreciates these efforts.

The recent movement for the extension of licensing to occupations that were formerly not licensed has to a large extent been carried on by the occupational groups themselves. What is now needed is to increase the infusion of lay interests into both the professional and trade control boards in order to apprise the professions and the crafts of the needs and desires of the general public.

One difficulty that has recently arisen in Delaware in respect of licensing requirements is the tendency to use the licensing system as a means of gaining public revenue. Both state and local jurisdictions have become involved in this practice. Nearly sixty different crafts require a license before a person may participate in them. The licensing in a good many of the instances is not accompanied by any type of examination; the main purpose of the requirement is to gain money for empty public treasuries. These licenses are but taxes, and they tend therefore to be discriminatory because certain trades are singled out for imposition of the license while other trades of like categories are not involved in licensing. In some instances professional people are not only made pay a registration and examination fee but are compelled to pay an annual license fee in order to retain registration. Other professions are exempt from this latter requirement. Actions of this type lead to a questioning of the whole *raison d'être* of the licensing program and only tend to bring into ill repute the role of government in the regulation of professions and crafts. Serious thought needs to be given the basic concepts governing the administration of licensing in Delaware.

NOTES

¹ *Hoff v State*, 39 Del. 143 (1938).

² *Becker v State*, 37 Del. 454 (1936).

³ *Wilmington News*, March 27, 1953.

⁴ *Revised Code of Delaware* (1953), Title 23, sec. 114.

⁵ *Report of the Executive Committee of the Commission on Reorganization of the State Government of Delaware*. (1950), p. 36.



CHAPTER 22

Planning and Development

THERE HAS NEVER BEEN a serious attempt at state-wide planning in Delaware. The intense local feeling coupled with the fact that the State has had, until fairly recent times, an almost completely agrarian culture has prevented any over-all program for orderly economic and social development. The coming of large scale industry and the concomitant rise in population have created a steady demand for a systematic approach to the problems of an interdependent, complex economy.

The greatest impact of the social and economic changes has been felt in New Castle County, and it is in this area that some beginning efforts at regional planning have occurred. There has been no movement, toward the establishment of state-wide planning agency although it is evident that Delaware is undergoing a tremendous economic expansion, which will bring with it serious social problems. These problems will necessitate the adjustment and control that can be provided only through the type of systematic analysis afforded under a state-wide planning program.

Local electoral contests often develop when civic-minded groups feel their community has not "advanced," and movements, somewhat of a vigilante nature, start in order to get new blood into the civic veins. Citizen's groups are to be found in many of the larger communities, and their watchwords are "progress" and "planning." They have been responsible for many of the local towns adopting zoning ordinances, which restrict buildings to certain types in given areas. In addition to the pressure applied by citizens groups to obtain zoning, recreational associations have been able to force local authorities to provide parks and playgrounds. Some local groups have been able to get municipalities to sponsor cultural activities programs, but in general, town governments have veered away from such pursuits feeling either that these are not within their legal province or that the return is not measurable.

HISTORICAL BACKGROUND

Immediately following the entrance of the United States into World War I, John G. Townsend, Jr., then governor of Delaware, appointed an informal group known as the Reconstruction Commission for the purpose of evaluating the needs that would confront the State upon the cessation of hostilities. Out of the efforts of this early group has sprung the series of informal arrangements, which have been centered in the office of the governor for the purpose of coordinating state administrative activities. In only a very limited sense, however, can the work of this informal group be considered an approach to state-wide planning.

The rapid growth of New Castle County helped bring about a constitutional amendment in 1927 to the effect that the General Assembly could enact laws under which municipalities, other than counties, might pass zoning ordinances to regulate the types of buildings and other structures and their use. Beginning in 1931 and continuing to the present day many of the larger municipalities have adopted zoning ordinances under legislative grant. Zoning at county level, however, was long denied because of alleged constitutional prohibition. Accordingly, after ceaseless pressure had been applied, the legislatures of 1949 and 1951 passed enabling legislation to amend the constitution to the effect that zoning in the rural unincorporated areas of New Castle County is now possible. Similar efforts in behalf of Kent and Sussex have failed to gain approval. Zoning is not permitted in those counties except in municipalities.

In 1931 the legislature, acting under its police power, at the urging of numerous civic groups, created a regional planning commission for New Castle County. However, it was not until 1953 that legislation permitting municipalities to create formal planning commissions was passed.

In 1943 the governor appointed a Post War State Planning Commission. This was an *ad hoc* body aimed at ascertaining the needs that would exist in the State after World War II. The commission was a rather large group composed of some forty-five persons. Most of those appointed to it were members of the several state agencies such as the State boards of health, welfare, agriculture, and education. Representatives from civic groups interested in labor, personnel management, urban development, and recreation also served on this commission. The survey made by this commission was rather extensive. It included an assessment of the health needs of the State, of the educational program, of the need for recreation, and a Survey of the agricultural prospects. The commission divided its work among committees, and some of these subgroups did a very thorough job of evaluating the conditions in their respective fields. The committee dealing with welfare needs was quite ambitious, its recommendations filling over half the report made by the plenary body.

The committee on urban development concerned itself with the needs for modern living in large communities, and its findings attested to its alertness in this growing field of social activity. This group recognized the need for long-term planning in the urban and suburban areas of the northern part of the state, and it made specific reference to water supply and sewerage. Housing needs were presented, and a long-term view was taken with respect to suburban housing developments. In this latter point the committee showed considerable prescience, but its recommendations apparently had little effect upon the state officials who were responsible for this area.

The Report of the State Post War Planning Commission was made to the governor in December, 1944. Although much effort had been put into this project, little was accomplished at a governmental level. The chief contribution made by the commission was that it made a matter of record of the pressing needs for state-wide planning and development. With the presentation of its report the commission went out of existence. Today there is no formal means for the governor to develop planning and research activities.

THE PRESENT SCOPE OF PLANNING ACTIVITY

Although no state-wide agency has been entrusted with the task of over-all planning, that is, planning including conservation of natural resources, housing, health, and general welfare, several state agencies have been given the job of planning within their respective fields. The State Water Pollution Commission, formed in 1949, the State Public Service Commission created in the same year, the State Board of Health in 1879, and the State Geological Survey established in 1951, are all charged with comprehensive planning in important areas of public need. In spite of some effective work in planning done by these separate agencies, the need for a coordinating medium to harmonize their various programs is obvious.

The Regional Planning Commission of New Castle County, which was formed in 1931, has striven steadily to map out a plan for the development of New Castle County on an orderly basis. The program of this agency has been aimed at promoting the health, school, and housing facilities of the upper county. To this end it has cooperated with the authorities at county, municipal and state levels in an effort to provide the citizens of New Castle County with properly spaced housing, water facilities, sewerage, schools, and transportation. In view of its limited budget and the impact of tremendous economic and social change occurring in this area its achievements have been notable. However, it needs more authority and greater public support before it can bring orderly progress to the development of the northern section of the State.

Constitutional Basis

There is no specific article in the state constitution that provides for general economic development involving the coordination of public agencies for the promotion of the natural resources of the State. Under the police power there seems to be sufficient authority, if the legislature avails itself of it, for the organization of the several state units under a general plan of action, which would be aimed at promoting the health, safety, and general welfare of the citizenry. With a view toward providing the municipalities of the State with a degree of control over the type and location of buildings and other structures within their jurisdictions the constitution authorized the legislature to permit municipalities to adopt zoning ordinances.¹

This same article also provides for county zoning in New Castle County, the result of an amendment ratified in 1951. Thus the only specific article in the constitution designed to promote some aspect of orderly social and economic development deals with the zoning of areas for purposes of regulating type and use of buildings and the use of land. In fact, zoning has been the chief accomplishment of public planning in the State of Delaware. There has been no attempt to encompass general economic planning or to develop the natural resources of the State along the lines envisioned in some of the more ambitious conservation and economic programs of the western states.²

Statutory Provisions

Acting under its police power the General Assembly in 1931 provided for regional planning in New Castle County.³ This legislation was enacted for the purpose of promoting health, safety, prosperity and general welfare, as well as for the purpose of securing coordinated plans for roads, airways, railways, public buildings, parks, playgrounds, civic centers, airports, water supplies, sewers and sewage disposal, drainage and other improvements and utilities (excepting privately owned public utilities engaged in furnishing light, heat, power, transportation, or communication) in that portion of New Castle County not included within the corporate limits of any municipality. A municipality may request that it be included within the over-all planning program, in which case the limitation does not apply. The area included within the purport of this act is known as the Regional Planning District of New Castle County. Although the law is silent on the matter, it would appear that if a portion of the unincorporated area of the county were to become incorporated into a municipality then whatever plans had been applicable to that portion would be held in abeyance if the new municipality did not care to cooperate with the regional authority. The statutes, however, urge compliance

on the part of the municipalities with the regional authority with respect to the master plan of the district.⁴

In addition to the legislation providing for county planning in New Castle, the General Assembly in 1953 passed an enabling act permitting any incorporated city or town to establish a planning commission.⁵ The general duties of such commissions are to make a comprehensive development plan showing existing and proposed public roads, bridges, tunnels, parks, parkways, playgrounds and sites for public buildings. Routes of railroads and busses, locations of sewers and water facilities, and other public utilities are to be shown in the over-all plan. Once the general plan is drafted it is submitted to the town or city council for adoption. After a plan is adopted the town council or the town zoning board has the power to implement the proposals made by the planning commission. Here again planning is aimed at the laying out of districts for the purpose of regulating the types of building and the uses thereof, the establishment of utilities, and the promotion of adequate housing. In Delaware, planning is often confused with zoning, the result being that the planning board is ancillary to the zoning authority.

Wilmington and Newark and a few of the smaller towns have established planning commissions. The mayor of Wilmington in 1952 had appointed an informal body known locally as the Wilmington Planning Commission to develop a twenty-five-year design for the purpose of coordinating the growth of the city. The act of 1953 permitted Wilmington to establish a formal planning commission. What is greatly needed in the Wilmington area, however, is a metropolitan planning board to chart and regulate the growth of the greater Wilmington area. This body would need to have extensive power over the development of the many small communities, both incorporated and unincorporated, that ring the city. Probably it would be necessary to have some extra-state authority conveyed upon such an organization, which of course would entail an interstate compact. Permitting planning to be done on a municipal basis without some over-all coordination either at county or at metropolitan level is perhaps leading more to confusion than to order in the future development of the northern area of the State.

Under a statute passed in 1951, pursuant to the constitutional amendment permitting zoning by county authorities, the legislature provided that the Levy Court of New Castle County might regulate the location, height, bulk, and size of buildings and other structures; the percentage of lot that might be occupied; the size of open spaces for use of the general population, and the density and distribution of the population, and the distribution of buildings and land that lie outside the incorporated municipalities of the area for trade, industry, residence, recreation, public activities and other purposes. As in the case of regional planning, the territory lying

within incorporated municipalities can be included in county zoning if request is made by the governing authorities of the incorporated places.

Under the statute establishing the zoning board in New Castle County the levy court divides the territory of New Castle County into districts or zones of such number, shape, or area as it determines and within these districts it regulates the erection and use of buildings and the use of land. The purpose ascribed by the legislature for zoning is to promote the health, safety, morale, convenience, order, prosperity, or welfare of the present and future inhabitants of the State. Primarily the use made of buildings and of the land is regulated for the protection of both urban and nonurban development so that industry, proper educational facilities and satisfactory housing can be fostered. Thus it would appear that general planning is envisioned under the zoning laws, and it is felt by the legislature that close cooperation will be maintained between the regional planning and zoning authorities.

To finance the work of zoning the levy court may appropriate the moneys needed out of the general county fund. The levy court is further empowered to accept from private or public sources, state or Federal, any grants of money and service for the purpose of providing adequate zoning for New Castle County. If there is basic conflict between existing law and zoning regulations properly issued under the zoning statute, the latter prevails.

For the purpose of promoting health, safety, morals and the general welfare of the community, the legislative body of a municipality has the power, under legislative authority, to regulate and restrict the size and number of buildings, structures and adjacent land areas, the density of population, and the use of buildings and land.⁶ In order to effect such regulation the governing body of the town must divide the municipality into districts or zones. Specific administrative arrangements are prescribed for the effectuation of the zoning regulations.

In addition to planning and zoning legislation the legislature in 1953 permitted the levy courts in the several counties to establish permanent county park and recreation commissions. The purpose of these commissions is to provide and promote recreational areas, facilities, and programs throughout a county in which a suburban park community has been formed. Such a community, which must be outside an incorporated area, is determined by the levy court upon presentation of petition signed by fifty freeholders, after a public hearing and election on the petition have been held. The county park commission in New Castle County cooperates with the Regional Planning Commission for that area.

ADMINISTRATIVE ORGANIZATION

The legislature has provided that the commission form of organization

be used in administering county and town planning and zoning. By this method of administrative organization a cross-section of opinion on planning and zoning operations is achieved. In order to prevent the ready imposition of injustices the General Assembly has in each instance provided an appellate system whereby challenges to the findings of the planning and zoning commissions can be taken and a review of the findings obtained.

The Regional Planning Commission of New Castle County

The Regional Planning Commission of New Castle County consists of eleven members. They are: the chief engineer of the Street and Sewer Department of the City of Wilmington; the chief engineer of the Board of Water Commissioners of Wilmington; the county engineer of New Castle County; one person appointed by the Board of Park Commissioners of the city of Wilmington; one person appointed by the State Highway Department; one by the State Board of Health; one by the mayor of Wilmington; and four persons, by the Levy Court of New Castle County. The terms of the respective members are as follows: all those serving in ex officio capacity serve as long as they hold their offices, the members appointed by the mayor and the levy court serve for five years and the rest serve at the pleasure of the appointing body. Each member serves until his successor is appointed and qualified. The appointed members must be residents of New Castle County, and not more than two can be named from the same hundred. Persons appointed must be known to have the knowledge and experience that will enable them to pass upon regional planning and zoning problems, and they must not be candidates for or incumbents of an elective public office. The members of the commission serve without compensation but are paid their necessary expenses incurred in the performance of their duties.

The commission elects its own chairman, and it may create such other offices in addition to the chairmanship as it determines. The Public Building Commission for the City of Wilmington and New Castle County provides office space, and the Levy Court of New Castle County supplies all necessary equipment used by the planning commission.

The mayor of Wilmington and the levy court assign staff members to assist the commission in the exercise of its duties. In executing its powers the commission acts in conjunction and cooperation with representatives, agencies, or officers of the Federal government, of the State, and of any other state, or with local authority within the State of Delaware. The costs of operation are met by the levy court, which appropriates an annual sum not exceeding \$10,000 for the use of the commission.

All plats and maps drawn up by the commission must receive the approval of the levy court in order to be effective. If a plat is filed with the recorder of deeds without the approval of the commission and the levy

court that filing can be nullified upon appeal by the commission to the Superior Court.

Shortly after its inception in 1931 the regional planning commission began an air-map of New Castle County. This project was completed the next year. As a result of its mapping of the outlying sections of New Castle the Commission was able to publish a "Guide for Real Estate Developments." In 1934 with the aid of the commission certain civic organizations began an agitation for county zoning. In 1935 the commission worked with the Board of Water Commissioners for the City of Wilmington in developing a plan to extend water service to rural sections of New Castle County. The next four years were spent largely in trying to get the state administration interested in the greatly increased expansion of New Castle County and to make some plan to direct this expansion in an orderly manner. During the same period stress was placed on the need for a county building and plumbing code, which code was not established until 1949.

During the war years the commission devoted itself to developing plats and making rules and regulations to govern real estate development. Agitation for zoning continued and the commission decided to sponsor legislation for the setting up of county zoning. The commission also worked closely with the United States Air Force Ferry Command in making plans and plats for the laying out of the New Castle County Air Base. It was during the years 1941-45 that the permanent staff arrangements for the conduct of the executive and administrative business of the commission were made.

The years immediately following the war were taken up in developing plans for the extension of sewers; for the creation of parks and recreational facilities; and for the laying out of streets in the newly established suburban areas, in cooperation with the State Highway Department, and in preparing a master plan for land use to control the real estate development of New Castle County. Between 1950 and 1953 the commission was successful in finally getting approval for county zoning and for the creation of county parks and recreational areas. Real estate developers had to take care that sufficient water and sewerage facilities were available before beginning mass building, and the commission gained the right to be apprized of the general design that building developments were to take. Publication was made of the fact that "under no circumstances was any house, utility, or any improvement whatever to be started in a (housing) development until unconditional final approval had been given by the commission." 7

The work of the regional planning commission has developed steadily since the early and rather insecure days of 1931. Today the commission has sufficient power to see that an orderly arrangement for the erection of housing is adhered to by builders and developers. What has not been

done is the establishment of close working relations among the county authorities with respect to a long-term program of public works, of research in county financing, of planning for the proper distribution of population and industry. One of the difficulties lies in the haphazard administrative organization of the county. It is extremely difficult to make plans for future development if there is no agency or organization qualified and authorized to enforce them. County government is a vestigial remain in Delaware; and until governmental reorganization is accomplished, the full benefits of long range planning cannot be obtained.

Municipal Planning Commissions

Municipal planning commissions established under the act of 1953⁸ consist of not less than five nor more than nine members appointed by the mayor of the municipality and confirmed by the town council. In those towns having commission governments, the commission itself names the planning group. Appointees serve for five-year staggered terms. Removal can be effected for cause after a public hearing.

The court of chancery has jurisdiction if a planning commission wishes to enforce its conditions imposed upon building plans which conditions have been approved by the town authority.

Little can be said about municipal planning because the authority to establish municipal boards has only recently been granted. The need for municipal planning, however, is obvious. Excepting the City of Wilmington because its size renders it unique in any discussion of municipal problems in Delaware, there are nearly a dozen towns in the State which need to plan their development with a great deal of care if they are to avoid the pitfalls of chaotic expansion with the resultant collapse of public services. Newark, Dover, Milford, Seaford, and several of the newer communities in the area just outside Wilmington are undergoing expansion in population and industrial growth. Workers are pouring into some of them at a rate unknown to most people. Traffic conditions in Newark for example are getting out of hand. Building is going on apace, sometimes with little or no thought for utilities, schools, or streets. Police and fire facilities have been taxed to a point where adequate protection is no longer possible in some of the sprawling suburban areas. Electrical power lines have been overloaded, and unless some over-all plans are laid for the extension of electrical facilities frequent power failures are in store. Town after town is caught up in the swirl of rising costs and the need for stringent tax increases, yet the political machinery of many of these places is inadequate to meet these problems in a forthright manner. The methods employed to deal with the new conditions are based on the political mores of a past century, and the signal failure of local town councils leaves the local citizenry in complete frustration. Enlightened and vigorous leadership is sorely needed; with it must also come the willingness on the part of civic

officials to draft a tentative program for future development. The plans should be realistic; they should not be rigid and unadaptable to the felt needs of the local townspeople. Without some plan for action the alternative appears to be nothing short of chaos.

County Park and Recreation Commissions

County Park and Recreation commissions may be established by the levy court of the county. Each commission consists of five members all of whom must be residents of the county for a period of three years immediately preceding their appointment. Only three of them may be affiliated with the same political party. One member is recommended by the State Board of Education. In New Castle County, one member must be a member of the New Castle County Regional Planning Commission. The term of appointment is five years.

The commissions name their own chairman who serves in this capacity for one year. Subject to the approval of the levy court the county commission adopts rules and regulations for the administration of its park and recreation programs. The levy court in each county furnishes suitable office space for the commission.

COUNTY AND MUNICIPAL ZONING

New Castle County Zoning Commission

While planning and zoning are by no means synonymous terms, the two concepts are so closely interrelated that it is virtually impossible to have the one without the other. New Castle County has a zoning commission of five members, appointed by the levy court of the county for a term of five years. Each member must be a resident of New Castle County, living outside of any incorporated town or city. No more than three of the members may be of the same political party. Members of the regional planning commission who are qualified, are eligible for appointment to the zoning commission. Although the members receive no compensation, they may employ experts and other trained personnel to assist them in their duties. The levy court meets these costs.

After receiving the certification of a zoning plan from the commission, the levy court, after holding public hearings, may adopt the plan or make alterations, the latter subject to the approval of the zoning commission. The law is a bit vague as to which agency (commission or levy court) has the control, but it would appear that the zoning commission's rulings are to prevail. Any person who finds he cannot get a building permit as result of a zoning regulation has the right to appeal to the New Castle County Board of Adjustment. Appeals also may be taken from any administrative ruling based on a zoning regulation.

The county board of adjustment consists of three members appointed by the levy court for a term of three years. The levy court lays down the general rules under which the board of adjustment operates.

Any person aggrieved by a decision of the board, or any taxpayer, may present to the superior court a petition asking that the decision be invalidated. If the court feels it cannot make proper disposition of an appeal without further information, it will appoint a referee to take evidence and report to the court with his findings of fact and of law, which then constitutes a part of the proceedings upon which the court makes its determination.

Municipal Zoning Commissions

The mayor of any municipality may appoint, subject to confirmation by the council, a zoning commission of three members for a term of six years on a staggered basis. The zoning commission makes a report of its findings, in respect of zoning regulations, to the town council, which sees that they are enforced.

Appeals from zoning regulations are taken to a board of adjustment, which consists in most towns of the mayor, the solicitor, and the town engineer. Any person aggrieved under a decision of the board, or any taxpayer, or municipal officer may present a petition to the superior court for a review of the board's ruling. The court then may reverse, adopt, or modify the decision of the board.

STATE DEVELOPMENT DEPARTMENT

In 1949 the General Assembly, at the urging of the governor and certain business organizations, created the Delaware State Development Department.⁹ The primary purpose of this agency is to attract new investors and business, tourists, and travelers to the State. It is also its duty to inform the general public of the agricultural, commercial, industrial, and recreational opportunities to be had within Delaware. The State has become extremely publicity conscious in view of the expansion of industry generally throughout the Nation, and it was felt something of a positive nature should be done so that the State would get its share of this increase.

The director of the State Development Department is appointed by the governor and serves at the pleasure of the chief executive. He receives a modest salary. The director is responsible for the organization and administration of the department. He may hire experts and other personnel to aid him, but so far the budget of the agency has been so small that most of the work has devolved upon the director.

The department collects, compiles, and audits the information and data necessary to discharge its functions. It works closely with the State archivist in the dispensing of any material of a historical nature concerning the

State. An annual report of its activity is made to the governor. The work of this agency has been favorably received throughout the State, and it is felt that its continuance is justified in terms of the promotion of the State's interests.

NOTES

¹ Art. II, sec. 25. Apparently the establishment of town planning commissions did not require an amendment.

² See Kirk Porter, *State Administration* (New York: Crofts, 1938), pp. 334-37.

³ *Revised Code of Delaware* (1953), Title 9, ch. 25.

⁴ *Revised Code of Delaware* (1953), Title 9, sec. 2507.

⁵ 49 *Delaware Laws* 415 (1953).

⁶ *Revised Code of Delaware* (1953), Title 22, sec. 301.

⁷ *Report of the Regional Planning Commission of New Castle County*, June 30, 1953, p. 13.

⁸ 49 *Delaware Laws* 415 (1953).

⁹ *Revised Code of Delaware* (1953), Title 29: ch. 41.



CHAPTER 23

Municipal Government

MUNICIPAL GOVERNMENT in Delaware includes the government of incorporated towns and cities and of a few unincorporated towns.* The township does not exist in Delaware. The hundred is not a governmental unit; it is a unit used as a basis of representation in the legislature and as a tax area. The term "hundred" has been carried over from Medieval England. The hundred is also used in reference to the apportionment of members serving on several of the county commissions.¹

Including the City of Wilmington (itself a hundred) there are thirty-three hundreds within the confines of the First State; eleven in New Castle, nine in Kent, and thirteen in Sussex. Their names range from such mundane appellations as "Duck Creek" to the poetic Indian word "Appoquinimink." Although the legislature has the power to divide, abolish, or create hundreds, the complete lack of governmental authority in this unit leaves little reason for alteration. The smallness of the State, both in area and population, precludes the need for an intermediate level of governance; hence, the incorporated town is the subdivision of the county in Delaware.

Recently there has been serious discussion by municipal authorities of the need for governmental competency in the fast growing suburban or "rurban" areas in New Castle County. These well-populated sections are officially detached from the towns and are technically within the jurisdiction of the county levy court. They are lacking in the governmental controls necessary in thickly populated areas where questions of traffic, sanitation, police protection, and utility maintenance demand answers of a positive nature. It may be that the absence of local government in these areas will result in a resurgence of county power. (See Chapter 24 on

* Local "districts" for the regulation of schools, for sanitary purposes and for drainage purposes have been discussed in other chapters of this book.

counties.) At the present, the workhorse of local government is the incorporated town. Accordingly, an examination of this important governmental unit is in order.

CONSTITUTIONAL BASIS OF THE MUNICIPALITY

The State constitution makes little mention of local authority. The intention of the basic law in respect to municipal governance is that the legislature is the supreme authority. The legislature creates towns through the process of incorporation.

Most municipalities of 1,000 or more persons have chosen to be incorporated. Incorporation means that the legislature grants a charter upon proper application of the inhabitants of the community desiring to be incorporated. The charter outlines the territory of the town or "city." Towns over 5,000 tend to become "cities" when requesting charter changes. Population, however, does not determine which designation will be used. The charter also describes the form of government of the municipality and outlines in rather detailed form the power of its government. All such charters, and any later amendments thereto, require a two-thirds vote of the entire membership of both houses of the General Assembly.² As noted in Chapter 22, the constitution further provides that the General Assembly may enact laws under which municipalities may adopt zoning ordinances.³ No municipality may lend money to or assume the debt of private persons.⁴ Home rule does not obtain in Delaware, and no constitutional bar exists respecting the control of the legislature over municipal organization. The legislature has supreme power in respect of municipal government; it may abolish as well as create an incorporated town; it may amend any provision of a charter.

In 1952 there were forty-nine formally organized municipalities in the State.⁵ These towns were all rather small; only five (excluding the City of Wilmington) could boast of having over 5,000 inhabitants.

The legislature under its police power can also make provision for the government of a place having more than 300 inhabitants if the majority of the eligible voters in such place desire to be considered an "unincorporated" town. The majority of the unincorporated towns range between 400 and 1,200 population. In spite of the sparseness in people, every incorporated town or city (with the exception of Wilmington and Laurel in Sussex County) showed a percentage gain in 1950 over the figures for 1940. One place, Elsmere, a suburb of Wilmington registered an increase of 226 per cent. Newark, the seat of the University of Delaware, had a gain of nearly 50 per cent. The average increase was slightly under 20 per cent for the rest of the organized communities.

TYPES OF MUNICIPAL GOVERNMENT

Political management in the incorporated municipalities follows three general types. The first, and by far the most prevalent, is the mayor-council type. The second, is the commission type of town government in which five or more commissioners are chosen as a plural membered executive-legislative unit charged with the conduct of public affairs. The third form is the council-manager type in which an elected council and mayor choose a town manager who is given restricted authority over the administration of the municipal operation. Few towns in Delaware have adopted the latter type of local government, and in some of the places where it prevails it is questionable whether a true form of the manager system obtains because the manager is not given sole charge of administration including the supervision of the police.

Mayor-Council Government

As stated above, the type of municipal government most frequently found in Delaware is the mayor-council form, in which both mayor and council are elected directly by the citizens of the city or town usually for a period of two years. The members of the council have staggered terms; generally, one half of the council is elected at one time. The mayor usually presides over the council and has one vote in case of tie among the council members. He has no veto. Basically, his position is ceremonial. This form of municipal government as it is employed in Delaware does not contemplate a strong mayor. It is not often that a professional politician assumes the mayoralty. Usually this position is filled by a professional or businessman in the community. The councilmen often are local business people, but they do dabble in politics to a considerable extent, and some of them are found working within the party organizations of their hundreds. Some members of municipal councils have used their positions as stepping stones to the state legislature. Generally, after a person is elected to the council, he will retain the job indefinitely inasmuch as spirited contests in local elections are not the rule in Delaware. The voters' apathy in connection with local elections is notorious, and has been made the subject of excoriation by civic groups throughout the State.⁶

Council meetings and commission meetings are conducted publicly; in some instances, especially if a question involving property rights is up for discussion, these meetings will be attended by a sizable number of the citizenry. Although local councils do not like to be badgered by irate taxpayers, they are quite apt to refrain from doing anything that a local group ardently opposes. In this sense Delaware enjoys at the local level a grass-roots government that is the envy of larger communities in other states even though these communities may have greater voter participation

in local elections. Experience in local affairs in Delaware attests to the fact that operational democracy subsumes more than mere electoral participation.

Commission Government

The commission form of municipal government is not used extensively in Delaware. Less than a half dozen towns employ this method of governance. In those that do have commission government, the commission usually consists of five persons elected by the local citizens. Each commissioner is charged with the administration of some important phase of town control, such as the water department, the police system, street and sewer maintenance, or the running of the parks and recreational facilities. The one great objection to the commission form is that there is no one head in charge of the coordination of these services. Each commissioner might well go his merry way oblivious of the relationship between his department and that of a colleague. On the other hand, several advantages accrue from the use of this municipal governmental form. First, administration in many of the smaller towns is closely aligned with public policy making. Hence, those who administer are in a good position to say what is needed in the way of ordinances. Second, the cost of hiring administrators is often prohibitive in the smaller towns, and the need for professional administration is not pressing. By having the commissioners serve in administrative capacity the costs of local government are pared. Also, there is the advantage accruing from the fact that townsmen can place responsibility very directly for failure in water supply, improper street lighting, inadequate sewerage. One man will have to answer for a breakdown in his assigned department. He cannot readily pass the responsibility off on the whole commission. As the municipalities have grown, however, the tendency has been away from this system of town government in Delaware.

Council-Manager Government

Although several of the smaller (population between 1,000 and 3,500) incorporated towns still use the commission system of local government, the council-manager plan has been employed in over a half dozen of the smaller towns from time to time. The council-manager form consists of an elected council and a professionally trained public administrator chosen by that council, who is placed in direct charge of the municipal administration. He is responsible to the council and can be removed by it, although usually he is appointed, under contract, for a specified term. In 1952 the council manager form was used in only four places.* In 1952 Newark the second largest municipality in the State, decided under its

* Dover, Milford, Rehoboth Beach, and Smyrna. See *Municipal Yearbook*, 1953, p. 523.

charter to avail itself of a city manager. The first manager of Newark was appointed in 1954.

During the course of the past fifteen years several towns in southern Delaware adopted the manager plan, but in three instances it has been abandoned. Some towns, for example, New Castle, have the right to set up a manager system under their charters, but have not availed themselves of these provisions. Twice within the past five years New Castle rejected by popular majorities proposals to institute the manager form in its government.

It would appear that one of the reasons the manager scheme has not caught on in Delaware is that until quite recently the towns, especially in the downstate areas, have had populations under 2,000. Towns of this size do not need the kind of expert supervision and management required in a town of close to 10,000. Most of the downstate communities have been fairly static in regard to population, although there are signs of growth detectable in some of them. If this growth manifests itself there should be a movement toward the manager idea. There has been an increasing demand for revision in local administration in those quarters where rapid growth in population has occurred.*

Local administration in Delaware has long been conducted on a very informal basis. In many instances in towns with mayor-council government the councilmen have served on committees that have acted as administrative boards supervising various aspects of municipal activity. The mayor has not been an executive officer in any sense of the word. Administration in many of the larger towns has been a hodge-podge of accumulated powers and duties created in answer to demands for public action in areas of civic need. The council-manager plan has been thought to be an answer to this situation, but for this form of government to be effective, the administrative authority long wielded by the councils will have to be delegated to the manager. It is unlikely that such delegation will be made without serious misgivings on the part of many town fathers who have been long accustomed to the easy informality of semi-rural government.

Provision for competent administrative action is the pressing need of municipal government in Delaware. Whether the council-manager plan is *the* answer to this need is not yet clear. Unless some administrative reorganization is achieved, however, it is certain that many municipal problems will go unsolved. Eventually the failure of the town officials to meet these problems will result in vigorous political activity of a "reform" nature. Already the signs are out in some towns that civic groups are stirring, and demands for change are in the air.

* Newark is one of these areas. The population increase in Newark has been phenomenal. Between 1940 and 1950 the population advanced 50 per cent from some 5,000 to slightly over 7,000. In 1955 the estimated population was 15,000.

CITY OF WILMINGTON

The City of Wilmington warrants separate treatment in any discussion of municipal affairs in Delaware because it is in a rather unique position, being the only city of any real size in the entire State.

Its Problems

The problems of municipal governance found generally throughout Delaware are accentuated in Wilmington. This city of 110,000 persons is undergoing a tremendous social transition. Although there has been little increase in the population since 1930, there is great mobility in its population. Good housing is at a premium, and much of the housing in the poorer sections should be destroyed. Although few private dwellings are being built, the need for new houses is pressing. One difficulty in this respect is that space for housing is greatly limited. Industry is taking over more and more of the city's area. Although some of the larger firms have built large office buildings outside the confines of the city, many of the business houses have elected to expand within the city's limits. Increase in business and industry and the expanding personnel resulting have caused many persons to seek housing outside the city. This situation has played havoc with the administration of utilities, traffic, and schools. It has also had an adverse effect upon the city's finances.* The need for diversification in taxes has manifested itself, and there is some prospect that the city may resort to a payroll levy to gain adequate revenue.⁷

In 1932 less than \$3 million comprised the city's expenditures. In 1952, the total was over \$10 million. The number of municipal employees rose from 650 in 1932 to 2,500 in 1954. In 1930 the population was 106,597; in 1950 it had reached only 110,504. These figures expose the problems confronting Delaware's first city. There is much evidence that Wilmington has reached its maximum population and that from now on the growth will be in the surrounding suburban area.

TABLE 19
POPULATION OF WILMINGTON, 1910-1950

<i>Year</i>	<i>Population</i>
1910	87,411
1920	110,168
1930	106,597
1940	112,504
1950	110,356

* Wilmington was reported by the United States Bureau of the Census to have one of the highest per capita expenditures in the country for a city its size. See *Wilmington News*, June 1, 1953.

The traffic problem in Wilmington has become acute. Although valiant efforts are being made by the mayor and other municipal officials to ease the congestion caused throughout the day by the influx of motor vehicles bringing workers and shoppers to the center of town, apparently little can be done to speed the flow of traffic because of the narrow streets in the downtown section of the city. Recently, off-street parking has been talked of and the City Parking Authority has begun a series of surveys aimed at finding out how the traffic and the attendant parking problem can be met. The authority attempts to coordinate its activities with those of the Department of Public Safety and the Street and Sewer Department, which regulate the highways and streets of the city, but no significant success has attended its efforts to relieve the acute parking problem.

Next to traffic, public health is the greatest problem confronting Wilmington. The lack of space (the city has less than sixteen square miles of area) for housing improvement makes the clearance of slums and sub-standard dwellings extremely difficult. In addition to the problem of poor housing, the city is plagued with the matter of improper inspection of foodstuffs. The difficulties involved in food inspection grow out of the fact that several open street markets are located in the city. These so-called farmers' markets exist by legislative fiat and have been a thorn in the side of the city officials for decades. They are administered through a clerk of the market who reports to the street and sewer department of the city, but they are without inspection except of the most cursory type. Foodstuffs are sold under the most primitive circumstances, yet any effort to break up these markets meets with determined stands by the hucksters using them and by certain old residents of the city who view these markets with a sense of nostalgia.

One further problem, found in many cities in which the daytime population is different from that living in the city, is that of a rising crime rate. The municipal court, presided over by two judges, does a full time day and night business handling the petty crimes occurring within the city limits. In addition, the docket of more serious offenses, which are taken to the superior court, is increasing. As Wilmington has assumed more of a metropolitan aspect, the informal local controls over the public peace, that were in effect when it was a smaller municipality, have tended to diminish. Crimes of violence have shown a marked rise in the past ten years, and have become the concern of civic groups as well as of the police. The upsurge in juvenile delinquency has brought about movements for more recreational facilities in the city yet the physical areas available for their establishment are severely limited.

The chief difficulty in handling these civic problems is that their causes are not found entirely within the jurisdiction of the city. Wilmington serves as a nerve center of a vast social network, the slightest peripheral stimulation of which is somehow recorded at the central point. Yet the

center has no control whatever over the stimulation of its end points. In order to give Wilmington control over the surrounding areas it has been suggested that the corporate limits of the city be expanded, but to do this would involve legislative action that no doubt would be seriously resisted by those areas that would be incorporated within the city. Although the constitution does not specifically prohibit the extension of the city's limits, any extension would affect its representative districts; and such change would be strenuously opposed by the local politicoes.* No increased representation would be given the city in the event its boundaries were extended.

In brief, the city is caught in the center of a fast growing area, but under present legal arrangements it is limited in what it can do in meeting the problems that confront it. The city officials have been severely castigated because of their alleged failure to act, yet little heed is given the fact that under present legislative stipulations and constitutional limitations the city is not always free to act.

The Government of Wilmington

Although it is the only large city in the State, and, by that fact, unique in terms of the governmental problems it has to face, Wilmington operates under a charter from the legislature.⁸ The present charter dates to 1932, although it has been amended as lately as 1955.

The government of the city is the mayor-council form. The city is divided into twelve equally populated wards, which are stipulated in the charter. Each ward is represented in city council by a single member. The elected officials of the city government, all of whom are elected for four-year terms, at the time of the gubernatorial election, are: the mayor, the president of city council, the twelve councilmen, the city treasurer and the two district tax collectors. There are no other elected municipal officials. The president of city council presides over the council meetings, sets the agenda of the council, and conducts the public hearings held by the council. The mayor appears before council when he wishes to present suggestions.

The mayor appoints a solicitor and an auditor. In addition he names to a series of plural-membered administrative boards or commissions charged with supervision of the streets, sewers, public safety, harbor, water, health, building inspection, assessments, sinking fund, planning, and zoning. He also names the Parking Authority which is concerned with the erection of proper parking facilities within the city proper. The Board of Park Commissioners and the Board of Public Education are appointed by the resident judge of the county. The city council names the milk and meat inspectors, the city clerk, the board of examining engineers,

* Minor extensions of corporate limits have occurred. See 46 *Delaware Laws* 236 (1947).

one commissioner of the Public Building Commission, and the park guards. Most of these boards are autonomous. They present their budgets directly to city council, and little accounting authority over their activities rests with the city's chief executive.

The lack of any real executive control over municipal operations caused a demand to be brought before the legislature in 1953 to improve the position of the mayor vis-a-vis the city's administration. Accordingly, he was given a veto over administrative orders having the effect of law which are issued by the various boards and commissions. He was not given complete control however, inasmuch as an appeal can be lodged with the city council from the mayoral veto, and final disposition is made by the legislative body. Yet the veto has reduced the autonomy of the boards.

The council's chief function is to enact legislation in the form of ordinances. All ordinances must be considered at two meetings of council. All bills must be read three times, but this is done perfunctorily for the first two readings. There must be an absolute majority for passage. Certain financial legislation requires a two-thirds vote. The mayor may veto proposed legislation, and a two-thirds majority is required to override his veto. If the mayor refuses to sign, yet does not return the proposed ordinance to the council within ten days, the bill becomes law without his signature.

With respect to municipal legislation, Wilmington is unique among Delaware communities. The right of initiative and referendum has been granted its citizens. If a petition bearing the names of 10 per cent of those who voted in the preceding city election is presented to city council calling upon that body to place before the electorate at the succeeding municipal election a legislative proposal on any matter within the power of the municipal government, the council must make the presentation. If approval is obtained from a majority of the voters, the proposal becomes law in the same manner as an ordinance. There have been no recent occasions in which this power has been exercised.

The mayor has little opportunity to bring an agenda or list of proposals before the council for action. He does not even preside over this body. The council meets under the presidency of an elected official, the president of city council. Although the official name of the city's government is "The Mayor and Council of Wilmington," the chief executive is separated from the lawmaking body. The complete separation of the mayor from the council is in accord with the general sentiment throughout the State that executives are to be severely restricted in power, yet those who advocate this approach are the first to decry the lack of unity and cohesion in municipal legislative programs. The lack of a strong executive in Wilmington has reduced the government of the State's first city to a hodgepodge of expedient measures, which naturally does little to promote the general well-being of the inhabitants. By separating the mayor and coun-

cil and by placing a series of quasi-autonomous administrative boards between the popularly elected officials and the citizenry, the state legislature has prevented the coordination of the executive and lawmaking agencies.

By having the various boards and commissions dependent upon the council, rather than upon the chief executive, the city charter has helped place municipal administration in a most chaotic state.⁹

The lack of a clear-cut system of responsibility in the city's administration has prevented efficient operation of municipal facilities. It has also permitted the administrative agencies to become pawns of the politicians. This situation in turn has led to a confused and frustrated electorate, which is only beginning to find expression for its disapproval. Heretofore, the lack of a vigorous two-party system has led to the continuance of administrative irresponsibility. The mounting pressure for civic reform particularly in the area of administrative services is beginning to be felt in the party system, and a strong two-party arrangement is now emerging. Wilmington has reached a point where the irrationality of its administrative set-up is beginning to be vigorously resented by a growing number of politically articulate citizens.

Although Wilmington is hedged in by legislative limitations with respect to its internal administrative organization, it has a degree of fiscal freedom not found among the other municipalities of the State. There is wide latitude in the matter of levying taxes on real estate. The debt limit is very flexible: 10 per cent of the total assessed valuation of real property is the maximum amount for which the city can obligate itself, but there is no restriction upon the amount of assessment. City assessments are made by the Board of Assessment. Under certain circumstances ordinance to increase the debt must be approved by a majority of the voters. The one important stipulation placed by the General Assembly upon the fiscal freedom of the city is that the city council must make the appropriation called for by the Wilmington Board of Education in its school budget, which budget is not reviewable by the council.¹⁰

The chief financial problem of Wilmington is found in the shrinking sources of revenue. The city depends on the general tax on real property for its main income. Already there is evidence that this source is not sufficient to meet the pressing needs. A suggestion has been made that the State legislature should return that portion of the gasoline tax collected in the city to the city treasury for use in street maintenance. The salary tax is looked to as another means of future revenue.* Mercantile taxes and licenses do not supply any appreciable return. A sales tax has been proposed, but the establishment of such a tax would be suicidal in view of the growing merchandise marts that now practically surround the city. In

* Salary tax is a levy, usually at 1 or 2% placed on wages and salaries earned within a given jurisdiction, and it may be collected from residents whose earnings are made outside the jurisdiction.

short, Wilmington is hard put to see its way financially, and the future offers small encouragement.¹¹

MUNICIPAL FINANCE

No problem is more consuming of a municipal council's time and energy than that of how to get enough money to support the continually expanding activities of municipal government. Delaware towns have been relatively free until recently, from the necessity of seeking new sources of public revenue, but the respite seems over. Today town after town is having to face the rigors of a shrinking income in the face of rising expenditure.

The chief source of municipal revenue has been the general property tax levied on real property only. Rates have been extremely low—thirty cents the hundred dollars assessment has been the usual levy (Wilmington, of course, being an exception). Within recent years there has been over 100 per cent increase in the rates, and assessments have moved upward. Yet municipal taxes on real estate are by all comparison quite low. The customary low rate has had a deleterious effect; Delawareans have become used to paying next to nothing in local taxes, and the need for increased levies has come as something of a shock. Politicians are still violently opposed to increasing taxes, yet they know of the need for more revenue. None rides the horns of a dilemma as does the average small town politico in Delaware.

In addition to the property tax several towns use the mercantile levy as a means of revenue raising. Chambers of commerce fight this method, and it has never really brought a large return to town treasuries. Parking meters have been resorted to of late, but usually the income from these meters is earmarked for police pensions or some other obligation. The sale of water and electricity have long been considered proper means of gaining municipal revenue, and a few of the towns have their own plants. Funds from this source are an important item in municipal finance. In other places the water or electricity is purchased by the town and resold to the householders. Newark resells to householders and small business houses, but some of the larger firms are permitted to make direct purchase from the privately-owned public utility. Fees from building permits and other privileges bring in slight revenue. Likewise fines levied by the aldermen and magistrates are not high, as most of the traffic violations occur on the highways and are considered offenses against the State.

The current needs for revenue are forcing the local communities to look to a more diversified tax structure. Suggestions are constantly being made to the effect that sales levies, amusement taxes, and certain forms of excises be made. Few if any of these are feasible in view of the proximity of one town to another and because of the great amount of suburban

built-up area in which stores and other merchandising centers are located. For a town to enact any form of excise without first obtaining agreement to do the same from the surrounding area would be most foolish, and no merchant would permit it.

Whatever the form tax extension is to take there should be first some arrangement made between the municipal and county authorities agreeing upon common action, otherwise the locality instituting the tax will suffer. The general property levy is the most feasible from a standpoint of imposition and collection. There should, however, be a more equitable distribution of this tax. Some towns have taken of late to permitting industries settling within them to be free from town taxes for as much as ten years. This kind of inequality is resented by many local taxpayers in the communities into which large industries have recently come. Many of the workers in these new plants do not live in the town but use its facilities and thus increase the burden of those who live there but do not work there.

Expenditures are not only rising but are themselves becoming more diversified. Increases in municipal personnel have made town payrolls large. Demands for pensions and adequate care in the event of sickness or injury have added to the costs of municipal government. Most of the communities have had to improve their street and sewer facilities, and while some of this improvement has been assessed directly against property owners in the form of abutment levies and sewer rents, these usually fail to cover the increased expenditures. Parks and playgrounds, long considered by many Delaware towns as not being a proper public charge, are now viewed as part of the town program.

The new facilities afforded by the municipalities have required capital expenditure, which in most instances have required increases in the bonded indebtedness and the subsequent rise in debt maintenance. The legislature sets the debt limits of the towns either by specifying a certain sum or by setting a percentage of the total assessment of real property within the town. Recently the need for increased expenditure has been so pressing that several towns have petitioned the legislature to revise their charters so that the debt limits can be made flexible by being placed on a sliding scale based upon the assessed real property valuation.

To handle in an efficient manner the fiscal operations of the average Delaware community has required the introduction of modern fiscal machinery. Proper budgeting is essential if the efficient use of limited revenues is to be obtained. Sometimes the clerk of council has been charged with drafting the budget for mayor and council's approval. In some places the engineer works closely with the finance committee of council to bring the budget into shape. More recently, however, there has been insistence, particularly on the part of local businessmen, that a budget officer be appointed to handle the fiscal activities. Those towns using the council-manager system have a distinct advantage in that a comprehensive

and unified budget is available through the manager's office. Fiscal planning requires a full-time officer, particularly in view of the fact that in most Delaware towns the mayor and council are part time officials at best, offering their services on a voluntary basis.

Accounting as it is practiced in most of the small communities leaves much to be desired. Little is known of the current audit, and other than the requirement for some form of counter signature the expenditures are not checked until the end of the fiscal year when an outside commercial auditing firm is brought in to audit the books. Fiscal management in many of the local communities needs full-time staff and the placing of definite responsibility for its conduct. In this aspect of municipal governance the town manager plan seems to offer great possibilities.

FUNCTIONS OF MUNICIPAL GOVERNMENT

Most local communities with populations over 2,000 experience the same general problems. These problems concern public utilities, health and welfare, recreation, public safety, planning and zoning. In addition to the functions of local government listed above there is also the task of selecting public personnel whose responsibility it is to see that public policy is properly formulated and executed. The selection of town officials, which does not usually stir the interest of many of the town's citizens, is perhaps one of the most important functions of the town. Little attention has been given it in the past largely because the pressures upon local government have not heretofore been great or challenging.

In few instances—except in Wilmington, where the percentage might be slightly higher—does more than 20 per cent of the eligible voters participate in local elections. In some towns, the voting lists are cut appreciably, as the result of provisions requiring that only property owners vote in these elections. In almost every instance where a bond referendum is held, only free-holders may vote. In some towns, the mayor and also a certain percentage of the council must be by property owners. Some towns provide a differential in free-holder voting stating that votes will be apportioned according to the amount of tax paid.¹² In almost every town some form of tax must be paid in order to vote. In Newark, for example, there is a nominal per capita assessment. Another factor in the cutting down of the vote is the lack of partisan contests. By and large, balloting in the local elections in Delaware (with the exception of Wilmington) is of a nonpartisan nature. Sometimes the presence of party strength is felt, especially if the election involves persons who are known to be leading Democrats or Republicans, but in general, "politics" as popularly interpreted is eschewed. Whatever contests crop up are usually ones involving personalities. Local office holding is financially unrewarding. Very few localities pay their councilmen or mayor. In some cases the former re-

ceive \$250 per annum, the mayor, slightly more; but generally speaking, municipal service is on a voluntary basis. In fact, office holding is apt to mean a net financial loss because of the time it takes from the professional or business activities of the incumbents; hence, it is difficult to get qualified persons to hold local office.

Education, Health, and Welfare

The most extensive and the most costly service rendered at the local level is public education; this, however has been discussed in an earlier chapter. Each local community has its own board of health, which co-operates with the county health unit and the State Board of Health. The local boards are appointed annually by the mayor or town council. They consist of not less than three nor more than seven members, one of whom must be a physician. If the council has difficulty in filling the positions then it acts as the local board of health.

The general powers of the boards are to make orders and regulations concerning the place and mode of quarantine, the examination of ships (if the town is a port), the control of infected places, and the apprehension and treatment of persons who have been exposed to any infectious or contagious disease. In addition the boards are to supervise all public laundries and public washhouses within the towns. The control of conditions of employment in such places is within the authority of the board of health. General abatement of nuisances is within a board's control, and proper measures may be taken to prevent the development and spread of infectious and contagious diseases. If an epidemic prevails the schools and other places where persons gather may be closed by order of the board.

Many of the local boards have begun a systematic inspection of housing conditions in their localities to ascertain whether proper sanitary measures are being practiced. Privies and common water faucets are being eliminated, and in some towns there are ordinances giving property owners notice to connect their properties with the public sewage system. Garbage removal and incineration are usually not performed by the town authorities, but the health boards and the councils have passed regulations and ordinances covering these works. Few towns in Delaware provide for the collection of rubbish, but there is a movement toward this end, particularly in New Castle County. Garbage collection is done largely through contract with local farmers. There has been much agitation of late concerning the erection of municipal incineration plants, and the probability is that the next decade will see developments in this respect. The gradual absorption of open land by the newer building developments is rendering the free outlying dumping grounds exceedingly scarce so that some other form of rubbish disposal must soon be found.

The administration of welfare is in the hands of the state authorities in Delaware. Little if any provision is now made in the town budgets for public aid to impoverished families; rather lists are made of unfortunates and these are forwarded to the State Department of Public Welfare. There is of course, a great deal of private eleemosynary work done by the local churches and service clubs, but the towns, other than providing meeting rooms for some of these groups when private facilities are not available, do nothing. In some of the smaller towns and in the City of Wilmington there are movements afoot to develop programs with the purpose of eliminating substandard dwellings. Some of this work is being helped by the Federal grant-in-aid designed to furnish proper housing in depressed areas. So far these grants have been made only to the city of Wilmington through the Wilmington Housing Authority for purposes of slum clearance. The Federal government has also aided the city of Dover in providing homes for the increased personnel at the United States Air Force base located near that city.

Recreation

Few towns in Delaware have assumed public responsibility for recreation. In many of the more populous places private organizations such as recreation associations have been created and in some instances the town authorities have appropriated moneys to their aid. In Newark, for example, the town provides water and light to skating rinks and swimming pools operated by the town recreation group. In Wilmington the Recreation Promotion Service, a private group, works closely with the schools and the city authorities in developing a splendid program of recreational activities.

Some towns have parks and outdoor spaces for use as places of relaxation, and playgrounds. In a few spots the creeks have been dammed and water courses for swimming and boating have been developed by the municipalities. Recent revisions of town charters have made it possible for the localities affected to plan parks and playgrounds and to use the public moneys for their acquisition and maintenance. The trend is certainly in the direction of greater assumption of public responsibility for recreation.

Public Safety

Police protection has long been considered within the local public province in the United States. Every incorporated town in Delaware has a police force. The number of officers varies with the size of the town, but the rough rule of one for every 500 persons is a good average. Newark, has twelve officers on its full-time force with several others serving as traffic patrolmen. Every town of any size has its squad car or cars, its jail, its police signal system, and a headquarters for the administrative de-

tails of policing. In most towns the hierarchy of command extends from a committee of council or a commissioner charged with police supervision, down through a chief of police, with one or two sergeants acting as administrative liaison between the command and the force. Few towns employ full-time detectives. If sleuthing is necessary the State Police or state detective force is called in.

Traffic control has become one of the chief tasks of the town police. The expansion of rush hour traffic has necessitated the hiring of special traffic officers in some towns. Traffic signals are becoming much more widely used, yet in spite of this, the number of traffic offenses is on the increase in the local areas. Some relief is in the offing with the building of through highways circumventing the towns. The increase in population, especially in the dormitory towns, has added immeasurably to the traffic problems of many Delaware municipalities particularly of those in the northern section of the State.

Fire protection throughout Delaware (excepting in the City of Wilmington) is in the hands of volunteer companies. These organizations abound in the State. Hardly a town is without its company. These groups are in many aspects social clubs, having not only the regular male membership but also auxiliaries which put on cake sales, dances, and other social activities to raise funds for equipment. The State subsidizes each company in the amount of \$500 annually. Counties are also authorized by law to make annual subsidies to the companies operating in their several jurisdictions. The bulk of the expenses are met from voluntary contributions, which are usually collected during an annual campaign for funds. By and large the Delaware fire companies take a great deal of pride in their organizations, and have benefited from the facilities of national fire-fighting schools and the University of Delaware's fire prevention programs.

Arrangements have been worked out among the several volunteer organizations to provide cover for each other in case one of them has responded to a call and emergency develops within its area. The chiefs of these organizations give a great deal of their time in bringing the latest in fire-fighting techniques to the attention of their companies and in working out means for making available to all the companies any special knowledge or skill that one of them has developed. It is this interplay of forces that has knit the Delaware volunteer companies into a more coordinated unit than is usually found among volunteer organizations.

With the increased traffic of recent years, the parking problem has become severe in many Delaware towns. In order to deal with these problems the legislature has provided that municipal parking authorities may be established in any incorporated town in Delaware. Under the law such authorities are not engaged in the performance of a municipal function. The authority is for the purpose of conducting research to give informa-

tion concerning the need for off-street parking facilities. The authority is also able to plan, design, locate, acquire, hold, construct, and maintain and operate parking facilities. There may be no sale of gasoline, or other products needed for automotive operation or repair. It can sue and be sued, and in these aspects it constitutes a public body corporate and politic, exercising public powers of the State as an agency thereof. It may issue bonds and provide for their retirement.

The powers of any parking authority rest with a board composed of five members, who are appointed by the mayor of the municipality. They serve for five years on a staggered basis. The authority makes rules for the use of the facilities which it operates. So far the City of Wilmington has been the only municipality in the State to establish a parking authority, the functioning of this agency cannot as yet be judged adequately as it has only recently come into being.

Public Works

All incorporated towns in Delaware are responsible under their charters for the maintenance of the streets and avenues within their jurisdiction. The State Highway Department aids in the maintenance of the state highways that go through a town, but does nothing in respect of the feeder lanes and streets. With the overburdening of the main highways by the increased volume of traffic, there is a constant overflow of through traffic into some of the lanes and roadways of the towns. Nevertheless, there has been no effort by the State Highway Department to take any responsibility for the maintenance of these local roads. New Federal legislation covering grants-in-aid for highway maintenance probably will make provision for such roads; therefore, some help is in the offing for the municipalities in the care of their streets.

Most of the smaller incorporated towns do not retain a full force for road and street repair. The result is that the local streets frequently get into a run-down condition that necessitates a general overhaul. When such repair is needed a general contract is let to a private road construction company.

In some towns the municipal authority is responsible for the maintenance of the curbing and gutters. In Wilmington the gutters and curbing are the responsibility of the abutting property owner. Sidewalks in all jurisdictions must be cared for by the property owners. Street and gutter cleaning is a public responsibility, but there is need for much improvement in the cleanliness of local streets in Delaware communities. Street cleaning has rarely been viewed as a public duty in the First State.

Street lighting is furnished by all of Delaware's incorporated municipalities, although in Wilmington both erection and maintenance are done under contract by the Delaware Power and Light Company. In other

cities and towns the municipal authorities maintain the street lights. In some of the fast growing unincorporated communities no public provision is made for street lamps, and the result has been for local householder associations to arrange their own public lighting system. This fact has been a source of extreme agitation against the county levy courts by the householders in these localities.

For many years the smaller towns in the State were extremely slow in providing adequate public sewerage for the use of the businesses and dwellings in their jurisdiction. Towns grew apace but the sewer facilities became grossly outmoded and completely inadequate. With the development of the suburban unincorporated communities the need for central sewerage mounted, and in 1950 the county of New Castle began the trunk sewer project with its extensions into the towns of the northern part of the county. This project afforded great relief to the overloaded sewer systems in the localities, and at present it furnishes the chief means of sewage disposal for the newer communities. The towns in New Castle have in many instances expanded their own sewage disposal plants, and with each new housing development arrangements are made for providing adequate sewerage. In the lower part of the State the problem of sewage disposal is also very serious, although here also great improvement can be seen if one compares present conditions with those that existed a decade ago.

Until recently little attention was paid to the need for storm sewers and surface drainage facilities, but the increase in housing in much of the low-lying land, in New Castle County particularly, has caused the municipalities and the county to improve surface drainage. In most instances the outlay for this type of construction had to be met by bond issue, but so far there has been little public remonstrance concerning the increase in public debt in this respect. The alternative, of course, would be increase in taxes. People in Delaware, as elsewhere find borrowing more palatable than paying-as-you-go. There is, of course, the further reasoning that borrowing in the course of a secular inflation is perhaps advantageous to the present taxpayer.

Planning and Zoning

Planning and zoning are rapidly becoming important local functions. Although they have been discussed in chapter 22, one very important point should be emphasized here. The State of Delaware is small in size and its population is increasing rapidly, particularly in the northern portion; therefore, if planning and zoning are to be effective they must be done on a county, or preferably on a state level. There has been little agitation to develop a state-wide planning program looking toward the orderly development of land use in the commonwealth. As greater im-

pignements upon the available land take place, however, it would appear that increasing demands will be made to have an over-all planning program at state level.

OTHER LOCAL UNITS

Unincorporated Towns

There are over fifty places containing concentrations of population in Delaware that are not within the purview of formalized municipal direction. Many of these places are "unincorporated" towns. The unincorporated town is defined in the statutes as any place having more than 300 inhabitants who reside within a certain area that is not within the confines of an incorporated town.¹³ The government of an unincorporated town is simple. All that is needed for a local governmental body to be established is for the majority of the inhabitants who are qualified to vote for a state representative to elect at an annual meeting three commissioners. The local justice of the peace acts as the election official. The powers of the commissioners are extremely limited. They may, by ordinance, regulate the streets, lanes, and alleys of the town. If there is a complaint from any local citizen, they must inspect any chimney, stovepipe, fixture or other matter considered to be a fire hazard. Borrowing within stated limits for outlined purposes is possible, but permission must be obtained from the legislature. Taxing power is severely limited. Most of the unincorporated towns contain less than 500 persons. The tendency is for places of greater size to seek incorporation in order to meet the greater demands of larger communities.

Special Districts

Tax districts, sanitary districts, and school districts, all of which exercise some authority in that they can levy taxes and perform public functions, make up the rest of the local governmental units in Delaware. They have been discussed elsewhere in this book.

NOTES

¹ *Revised Code of Delaware* (1953), Title 9, sec. 2503.

² *Constitution of Delaware* (1897), art. IX, sec. 1.

³ Art. II, sec. 25.

⁴ Art. VIII, sec. 8.

⁵ *Local Governmental Structure in the United States* in 1952, U. S. Bureau of the Census (Washington, D. C., 1953), p. 24.

⁶ See *Wilmington News*, December 29, 1952 and March 17, 1953. Also *Wilmington Journal-Every-Evening*, January 8, 1953.

⁷ *Wilmington News*, November 22, 1954.

⁸ The charter, its amendments, and statutes pertaining to the city, are found in the *Revised Code of Wilmington*, 1942.

⁹ See Chester C. Maxey, *County Administration: A Study Based Upon a Survey of County Government in Delaware*, (New York, 1919), p. 164.

¹⁰ See *Revised Code of Wilmington*, 1942, sec. 65-66.

¹¹ *Wilmington Journal-Every-Evening*, May 15, 1954.

¹² See *Wilmington News*, January 21, 1952, for voting arrangements in the town of Smyrna.

¹³ *Revised Code of Delaware* (1953), Title 22, sec. 102.



CHAPTER 24

County Government

DELAWARE IS DIVIDED for political purposes into three counties. New Castle is in the north. In it is the city of Wilmington, the county seat. Kent is the middle and least populous county; Dover, the state capital, is its county seat. The southern county is Sussex, and its seat is Georgetown. Sussex is the largest in area and second largest in population. New Castle has the least land area, but has the greatest number of inhabitants. Until recently there has been no population growth in Kent. In the past few years its numbers have begun to increase. Sussex has shown a steady though gradual advance in population, and New Castle's growth has proceeded at a phenomenal rate.

When Delaware first became a state, the number of people in each county was approximately the same. The political arrangements regarding party organization and representative apportionment decided in that time were agreeable to the demographic facts, but as the tremendous economic and population growth occurred in the northern section of the State, the earlier distribution of political power became anachronistic. Today the disproportions in population alone deny the long standing statement that the State is made up of three equal counties. Yet the myth of county equality remains.

Historically the county in Delaware was the basic unit of governance. Both Swedes and English in their colonial enterprises along the "South" river, as the Delaware was then called, used the county as a judicial competency for the handling of the general police in the area. At first two, then later under Penn, three counties came to be recognized. The "lower counties on Delaware" although attached to the proprietary colony of Pennsylvania until the Revolution, were to all practical purposes independent of the northern fief after 1704. This southern territory (what is now the State of Delaware) obtained its own legislature in that year, and

to it each county sent equal numbers of representatives. Each county handled its own judicial problems with, of course, the usual appeals to the proprietors, the Penns, and to the Privy Council in England. Public affairs, however, were worked out for the greatest part within the aegis of county or of the three counties collectively. Little executive authority was exercised over them by the Penns, and legislatively as well as judicially they were virtually autonomous.

The early colonial experience in county self-sufficiency was reflected in the political attitudes of the local citizens at late as 1897. At that late date, when the present constitution of the State was formed, vestiges of the decentralizing tendencies were still manifest. As a result the theory of equal legislative apportionment still obtains. It is upon this theory of legislative equality among the counties that the present governmental and partisan arrangements in Delaware are based.

CONSTITUTIONAL BASIS OF THE COUNTY

In addition to the provision calling for county equality in the apportionment of legislators the constitution has reflected in other instances the strong popular attachment to the county. In the Delaware Bill of Rights there is a stipulation regarding grand juries. Each county is mentioned specifically and the number of grand jurors in each assigned. Article III contains provision for the so-called "line" officers of the counties (such as sheriff, coroner, prothonotary), and this article also proclaims that appointment to county office is restricted to residents of that county. Again, in the matter of judicial appointments, the basic law states that three of the state's law judges must be "resident" judges, that is, they must reside in the county over whose judicial affairs they preside.

Voting qualifications in Delaware call not only for state residence but also for county residence. The requirement that one must have lived in a county for three months before being eligible to vote is recognition of the locating of party strength within the county. Likewise the canvass of elections is on a county basis, the superior court sitting for each county having jurisdiction of the returns.

In the matter of taxation, per capita levies are permitted but the receipts are turned into the county treasuries. To maintain further its fiscal integrity, the county is prohibited from lending its credit or appropriating money to private persons. This latter provision is ignored in some respects by legislative requirement that counties make appropriations to fire companies, charities, and ambulances.

In creating the State Board of Agriculture the constitution refers to the fact that there are three counties inasmuch as it calls for three county resident numbers for this agency. In providing for local option the constitu-

tion divides the state into four districts, each county and the city of Wilmington making up the districts.

Finally, in the matter of constitutional conventions, the law provides that each of the three counties shall have two members at large in addition to those coming from the legislative districts within the county. Thus throughout the State's basic document the county looms large. The law recognizes the three historical counties and confirms, at least in part, their claims to autonomy in certain areas of governance.

STRUCTURE OF COUNTY GOVERNMENT

Levy Courts

The *Revised Code of Delaware* (1953) devotes over 300 pages to county government. The General Assembly has described the boundaries of each county, following with little deviation the sinuosities of the ancient landmarks that set the limits framed in colonial times. For purposes of taxation and administration the statutes provide a levy court for each county. New Castle and Kent are divided into what are termed levy court districts. Sussex is considered as a unit in respect of its levy court and does not have districts. The levy court is basically a taxing and an administrative body. It does not exercise ordinance power in the usual sense, but in its fixing of the county tax rate and in the administration of its fiscal responsibilities it does make regulations which have the force of law. It also sets capitation taxes, sewer and light charges where these apply.

Each levy court has three commissioners. In New Castle there are three levy court districts, one commissioner is elected by popular vote from each district. The same is true for Kent. Commissioners in Sussex are elected throughout the county and do not represent districts, although the custom is for informal rotation to take place in the electing of the commissioners in that county. The term of office for levy court in New Castle and Sussex is six years, in Kent it is two years. Each levy court selects its own president, whose salary is slightly higher than that of his two colleagues. The courts meet weekly. The clerk of the peace, a county elective official, serves as clerk of the levy court. Each court employs an attorney and appoints a county engineer. The commissioners have the power of investigation and may compel attendance of witnesses at their sittings.

Park and Recreation Commissions

As noted in the chapter in planning, the General Assembly in 1953 authorized the establishment of county park commissions. These agencies are appointed by the levy court of the county. Appointment is made on a

nonpartisan basis. Each commission has as its chief function the coordination of parks and recreational areas for the unincorporated places in the county, which places are designated as suburban park communities. Such communities petition the agency for a playground area. The agency then sets a referendum in the locality in order to see if the majority of the inhabitants is willing to meet the cost involved in maintaining such establishments. If the referendum is favorable the levy court is made responsible for the sale of the bonds to meet the original cost of laying out and equipping the park or recreational area. The real property within the community is assessed and taxed by the levy court. Fiscal control rests with the levy court, but the amendment of provisions controlling the operation of the park or recreational area rests with the commission. It also coordinates the activities of the parks and recreational area established within the county.

Other County Agencies in New Castle County

Employee Pension Arbitration Commission. For the purpose of settling any controversy that arises out of the administration of the New Castle County employees' pension plan, the levy court appoints a three-member Arbitration Commission for that county. These persons serve for four years. The levy court meets the expenses of the commission.

Sanitary Districts. Sanitary districts are not really agencies of the counties. They are established in New Castle County only, and operate under the aegis of the levy court in order to facilitate sewage disposal in areas where proper facilities for sanitation do not exist. Any fifty or more legal voters, who are residents of a proposed sanitary sewer district, may petition the levy court to submit the question of whether such a district should be established to the entire electorate of the area involved. After public hearing, the levy court determines whether or not it is in the public interest to establish such a district, and if it agrees, submits the petition to the voters. If a majority approve, the district is established. The county engineer and levy court attorney act as administrators of the district, set the assessments, and procure the necessary land rights. The levy court may issue county bonds to finance the cost of sewerage construction, and the residents in the district are taxed to meet the bond retirement and the cost of operation. The levy court may, upon the recommendation of the county engineer, extend a sewer in a district as the need for such extension becomes manifest.

County Officers

The counties in Delaware, following the pattern found in most American states, have the usual "line" officials: the sheriff, the coroner, the prothonotary, the clerk of the peace, the receiver of taxes and treasurer (combined offices), the comptroller, recorder (of deeds), register of wills,

collector of delinquent taxes (in New Castle only), and the oddly titled register in chancery and clerk of the orphans' court. The sheriff, coroner, clerks of court, prothonotary, and register of wills, and recorder are constitutional elective officers. They serve for four years with the exception of sheriff and coroner whose terms are two years. The sheriff may not succeed himself. The other offices have been created by statute. With the exception of the collector of delinquent taxes in New Castle who serves at the pleasure of the levy court, these are elective and in most instances are party plums, as are the constitutional offices.

All these officials are required by law to make monthly accounting of all fees, costs, and allowances that are taxable by or payable to them to the county treasurer. The county comptroller makes a semi-annual audit of the accounts for the several officials. All officers are bonded.

By law, the above officials are permitted to employ a limited number of deputies and clerks. In New Castle County the resident judge may authorize employment of extra clerks as the need arises. In Kent and Sussex Counties this authority lies with the respective levy courts.

COUNTY FINANCES

The fixing of the tax rate on real property for the county is the chief function of the levy court.* The legislature sets the maximum rate and the commissioners must work within this limit in preparing and adopting the county budget. Properties of governmental, religious, educational, and charitable agencies are exempt from taxation as are certain businesses that the State wishes to encourage. In order to find the basis for tax upon real property the court appoints a board of assessment. In New Castle this board consists of four members, two from each party. In Kent and Sussex the boards are composed of three members each, no more than two of whom may come from the same political party. The term in New Castle and Kent is four years; in Sussex, six years. Assessments made by these boards are furnished to the respective levy courts, and it is upon these assessments that levies upon real property are made. New general assessments are required every four years in Kent County; re-assessments are infrequent in the other counties. Taxes are covered into the county treasury through the receiver of taxes and county treasurer who acts as the collecting officer for the levy court. In addition to real estate levies the county receives income from a variety of fees and licenses.

The capacity of each levy court to borrow is restricted by the legislature. The limitations differ from county to county. In general there is no over-all limitation as to the total maximum indebtedness a county may assume. The general rule is to set debt limits respecting specific enterprises,

* It also exercises specific regulatory power over collection and dumping of rubbish and garbage. *Revised Code of Delaware* (1953), Title 9, sec. 1525.

such as development of sewerage systems, suburban improvements, and airports.

Although the county's power to spend is not defined by the legislature, the levy court commissioners are specifically enjoined to make appropriations to hospitals, ambulances, fire companies, and for the care of the indigent sick within their respective jurisdictions. Discretion is given to the levy courts in the matter of contracting with water companies, and other services for the purpose of preventing and extinguishing fires in the areas beyond the limits of incorporated towns. The employment of police for rural patrol in New Castle County rests with the levy court, and expenses involved in the prosecution of this function are a legitimate expenditure. There are no county police in Kent and Sussex Counties. Generally, the levy courts may spend to cover the costs of executing their responsibilities as those responsibilities have been laid out for them by the legislature.

As public demand increases, especially in the suburban areas, the levy courts are being called upon to make added expenditures.¹ The lack of a trained budget officer working under the purview of the county commissioners has made the achievement of a rational fiscal policy practically impossible at county level. County finances are a hodge-podge, and there is no fundamental pattern common to all three counties. It is in the realm of fiscal operation that the greatest amount of re-thinking in county government in Delaware is needed.

The conduct of elections is likewise a county expense, and the increase in the budget for civil defense has become an added drain on the county treasuries. This latter is particularly true of New Castle; the civil defense arm in the lower counties does not receive the attention accorded it in the north. The salaries of county employees all of whom are under the jurisdiction of the levy courts, are paid from county funds. In 1953, there were approximately 600 county employees, most of them clerks in the offices of the "line" officials. The operation of employee pension funds is also becoming a sizable item in the New Castle County budget.

FUNCTIONS OF COUNTY GOVERNMENT

Prior to the early 1930's the tasks of county government were many and diversified. In 1931 the State began to take over functions which formerly belonged to the county. Care of the indigent went to the State. The construction and maintenance of all roads became the task of the State. Health administration came under the jurisdiction of the State. School administration had already been absorbed by the state authority.

In spite of this diminution in power the county has continued to play an integral part in government. Beginning in the 1940's a gradual resurgence in county function became noticeable. Planning and later zoning were added to the county's powers. The advent of suburban housing de-

velopment increased the need for expansion of utilities. Improvement in fire and police protection resulted from help given by the counties. Since 1950, the county has again come into its own.

Health and Welfare

The administration of health in Delaware occurs at state and municipal levels. The county is used as a basis for sub-dividing the work of health administration by the State Board of Health. There is a county health unit for each county. These units are established and maintained by the State Board. They cooperate with the local boards of health in the incorporated towns within the county, but their main efforts are directed toward the maintenance of health and prevention of disease in the rural areas of the counties.

All hospitals in New Castle County are authorized to care for the indigent sick in that county and to bill the levy court for the service rendered. Furthermore, the levy court makes an annual appropriation to the Wilmington General Hospital. Similar provisions prevail in respect of the treatment of the indigent sick in Kent and Sussex Counties.

Although the county is no longer responsible for institutional maintenance of its poor, it is required to help maintain the State Welfare Home at Smyrna and to match state moneys appropriated for general relief and aid to dependent children. In New Castle County these welfare items alone accounted for nearly \$450,000 or one-seventh of the budget in 1953.

The Levy Court of New Castle County maintains an ambulance service for the residents of that county. The levy courts make appropriations to the Children's Bureau of Delaware and other private charitable organizations.

Public Works

Prior to 1935 the counties were responsible for the construction and maintenance of most of the roads located within them. Today the county has control over only a few bridges; (except streets in municipalities) all roads are how the responsibility of the State. The State Highway Department, however, conducts its maintenance program on a county divisional basis, employing workers from a county to work on the roads of that county. Kent and Sussex still appropriate nominal sums to their communities for the maintenance of local streets, the amounts are prorated according to mileage.

The New Castle County Airport is operated under the control of the County Airport Commission, which is composed of three members appointed by the levy court. The group must be representative of the two major political parties. This commission appoints a director who manages the airport. Several of the large eastern airlines make stops at this airport, located five miles south of Wilmington. It is on the main north-

south air route, and its strategic position has caused it to be used as a United States Air Force Base.

Planning and Zoning

As noted in the chapter on planning the legislature has established a regional planning commission for New Castle County. Its chief functions are to coordinate plans for the laying out of roads, railroads, and sewers; the establishment of parks, playgrounds, civic centers, and airports; and the furnishing of utilities in those districts of New Castle County outside the limits of an incorporated town. The commission cooperates with the local municipalities if the latter request. Any new proposals for public works in the outlying areas must be submitted to the commission for approval. Zoning has been discussed previously, (See Chapter 22).

Utilities

In order to bring at least a minimum of the facilities necessary for the protection and health of the rural communities in the county, the levy court of New Castle County may enter into contracts with public utility companies to provide electricity for purposes of lighting the streets and roads of the unincorporated villages and places within its jurisdiction. Such contracts are initiated upon petition from the property owners in the areas concerned. To defray the expense involved a nominal light tax is levied against the property owners (farm land exempted) and the receipts covered into the county treasury.

The need for an adequate sewage system in the rural areas of New Castle County became evident in the early 1940's. Slowly, agitation from builders and real estate developers resulted in the county accepting responsibility for the construction of a trunk sewer system to which the suburban developments could connect. Larger towns like Newark, finding their own facilities overworked, have begun to connect with the New Castle County Sewer System. The results of this project have been very successful, and further extensions are now being considered. The financing was done through bond issues and the levying of a sewer tax, or rental, which is sufficient to service the system and provide for the debt service and retirement of the bonds. The New Castle County Sewer System is to be distinguished from the sewer system of the sanitary districts that are discussed above.

Miscellaneous Activities

Among miscellaneous activities of counties may be mentioned the enforcement of building regulations, licenses and fees, and the administration of libraries. The speedy growth of the rural areas in New Castle County has caused the levy court to develop a building and plumbing code in order to insure at least a minimum of safety in the construction of

dwellings. Building and plumbing inspectors appointed by the court enforce these regulations.

Although, as we have seen, most of the licensing for the conduct of professions and trades rests with the State and is administered through a series of examining and licensing boards, the counties have been given the right to grant certain types of licenses. Registration of plumbers working in the county is required by the plumbing code of New Castle County. Pawnbrokers and junk dealers must obtain a license from the clerk of the peace of New Castle County before doing business in that county. The clerks of the peace in the respective counties issue marriage licenses. The recorders of deeds in the several counties also collect fees for ancillary legal work done in their respective counties. All such fees are prescribed by statute.²

The Levy Court of New Castle County appropriates \$30,000 annually for the maintenance of a free library system for the county outside the City of Wilmington. This arrangement has permitted the dispersal of good reading material for children and adults in the more out of the way places. The Library Commission of the State cooperates in this worthwhile project.

Although the judicial function in Delaware operates mostly at state level, both the courts of common pleas and the Juvenile Court for Kent and Sussex Counties are maintained by levy court appropriations. In addition, each county is directed by state law to maintain the courtrooms and pay the salaries of most of the court attendants connected with the work of the upper courts operating in the county.*

RELATION OF COUNTY TO MUNICIPALITIES

Although for certain purposes, such as the execution of legal judgments, the county officials have authority over the entire territory of the county including that lying within the limits of incorporated towns, the statutes place certain activities within the exclusive jurisdiction of the municipal authorities. The supervision of sewers, water supply, streets, and lighting within town limits is left in the hands of the town officials. Some towns extend their control over conditions of public health to territory outside the town limits, and this is permitted by statute. Some municipalities sell water to outlying districts, and the control over this utility rests exclusively with the supplying town. The county is used by the town, however, to aid the latter in matters of assessment of real property. The county assessment is the base for the local municipal assessment. Some downstate municipalities receive help from the county in the maintenance of local streets and for the care of indigent sick residing within the town limits.

* Seventeen per cent of the budget of Sussex County in 1955 went for the maintenance of the court house and the physical operation of the courts.

There is a growing tendency for the county and town authorities to cooperate, particularly in northern New Castle County, where there is expansion in the unincorporated suburban areas. In the matter of laying out sanitary sewer districts the towns in northern New Castle have worked closely with the county engineer. The extension of the over-all New Castle County sewer plan with its network of interceptors is making possible the relief of local town sewer systems, which have reached the point of overburden due to the rapid increase of population in the municipalities.

Although it is true that the cooperation of county and town found in New Castle is not as evident in Kent and Sussex, there is strong reason for believing that the growth in population in Sussex will bring about closer rapport between the two authorities. Already the problem of zoning has appeared, and there is need for controlled building in the outlying areas of Sussex. Kent County, in the area surrounding the state capital at Dover, is beginning to experience a similar situation.

As the State increases in population and becomes more industrialized the rural non-farm areas will take on more and more of a suburban aspect. As the social problems arising from such developments become more complex, the need for cooperation among the local governmental units will be recognized. It is at this point that the county perhaps will come into its own. It is in the rapidly growing unincorporated suburban areas that intergovernmental cooperation between the county and the local municipalities can be most effective.

In general the political sophistication of a people is disclosed by their ability to make existing governmental forms meet the needs of growing society. In the county Delaware appears to have the governmental unit to handle its new needs. No doubt changes may have to be made in county administrative organization. More important, persons with political and administrative acumen will have to be recruited for these tasks. Experimentation in governmental technics will have to be rigorously engaged in. Unless the county is able to meet this challenge it might well be that some other governmental unit will have to be created to meet the pressing demands.

NOTES

¹ *Wilmington News*, June 17, 1953. The budget of New Castle County in 1953 approximated \$3 million, over one sixth of which went for sewer construction and maintenance.

² *Revised Code of Delaware* (1953), Title 9, sec. 9617.



CHAPTER 25

Intergovernmental Relations

GOVERNMENT IN THE UNITED STATES operates at three general levels—the national, the state, and the local. Any study of state government must include reference to the relationships existing among the three levels. The state government, although it owes its existence to its people under sufferance of the Federal Constitution, is constantly under the influence of the Federal authorities. The local governments, whether they operate under a home rule charter or exist merely as subdivisions subservient to the state authority, fit into a pattern of state-local relations that must be analyzed if the study of state government is to be complete. Furthermore, because the states are within the Union their common problems often reach solution through formal and informal arrangements among themselves.

The fourth article of the Federal Constitution sets out the legal framework in which the states operate in relation to each other and to the National government. The internal administrative organization of the states has been affected by Federal statute, largely through the system of grants-in-aid. The system of Federal grants-in-aid, particularly as it has developed during the present century, has in turn profoundly altered the original conception of Federal-state relations and in some instances the basic relationships existing between the states and their local governments.

In addition to the effect of the Federal grant-in-aid system upon state government there is also the influence of Federal authorities on the administration of state government in the fields of banking and agriculture. In Delaware, Federal influence in both these areas is keenly felt.

FEDERAL-STATE RELATIONS

Although Delaware prides itself upon being the first state in the Union,

it often chafes at the demands placed upon it resulting from membership in that Union. Delaware was not among the rebel states of the South in their war against the concept of federalism held by Lincoln, but it has, in the course of later Federal-state relations, often found itself in the role of an ardent supporter of the states' rights doctrine. Perhaps it is more fair to say that some of the prevailing articulate groups in the state have lent their voices to such advocacy. This articulateness in this cause has in turn found expression through official channels, and thus Delaware may be ranked among those who denounce the trend toward the centralization of public power.

The Grant-in-Aid System

There are several reasons for the antipathy Delawareans feel toward the centralization of power. First, the wealthier citizens of the state (who appear in great proportions as a class in Delaware) pay a tremendously high amount of Federal taxes. In 1952 nearly \$1 billion of Federal taxes came from Delaware. Secondly, those who benefit from Federal grants-in-aid to the state are few in number compared to their counterparts in more populous states. Thirdly, spokesmen for the group that meets the heavy Federal tax load contend that Delawareans receive little in return for the great amount of Federal taxes collected in the state. It is difficult to understand this argument. Then there is the latent fear, often expressed, that Federal aid "will eventually mean Federal control."¹ Federal authority is suspect and abhorred, yet a goodly portion of Delaware's earnings go to support that authority. A conflict exists in the minds of some of the more vociferous citizens; they feel that greater amounts in the form of grants-in-aid should be made to Delaware in view of the high taxation, yet they fear that with increased grants-in-aid will come increased Federal domination of state affairs.

It should be pointed out that not everyone in Delaware holds to the argument that Federal moneys should be kept out of the State; but inasmuch as most grants-in-aid are spent in the urbanized northern areas, people downstate tend to look with disfavor upon such help (except in respect of agriculture). Even in the areas that receive the greatest amounts in Federal benefits, there is some resentment because many of the grants must be matched by state funds. This means that state and local budgets tend to increase, with resultant boosts in local taxes. Yet without Federal aid many of the state programs would not be possible.

It is the heavy Federal taxation in Delaware that is at the root of present resentment toward the Federal government. Although the average Delawarean does not pay more tax than the average citizen in most of the northern and western states, he is apt to look at the total Federal tax take in the state (which figure is being constantly brought to his attention by press releases and information bulletins issued by spokesmen for busi-

ness) and come to the conclusion that the state is being "milked" by Washington. When the further fact is brought to his attention that Delaware pays over thirty times as much to the national government as the state spends to run its own government,² he is quick to conclude that a terrible outrage is being perpetrated.

Although many articulate segments of the population have proclaimed against the use of Federal funds in the state, there are several forceful elements in Delaware that do not look with jaundiced eye upon these grants. Some of these groups are found among the several state administrative agencies, whose positions in the state government are enhanced when grants-in-aid are used as means of getting better state appropriations for their operations. Closely associated with the attitudes of the administrative agencies is the feeling held by many that separate funds should be earmarked for the use of specific organizations, such as highways, schools, and so forth. It is held by these advocates that Federal funds, which are specifically allocated, help to get separate funds established at state level. This idea is, of course, in opposition to the spirit of the One Fund Act discussed previously. The Federal government has attempted to get certain state revenues channeled into certain areas for expenditure (for example, gasoline taxes for road maintenance), but so far the General Assembly has held to the theory of the general fund.*

Strenuous opposition to some types of Federal grants, such as those which compel greater and greater centralization of certain state agencies for administrative purposes, has come from private pressure groups. This factor is present among the welfare associations. The passage of the Federal Social Security Act of 1935, as an example, placed pressure upon state welfare agencies to consolidate. This movement tended to lessen the power of some of the more insignificant organizations, and their backers voiced opposition to this type of aid.

On the other hand, several private groups have been most happy to have grants come to the state because these grants have enabled state agencies to take over the operation of private institutions from them that are vital to the welfare of the people but that were being run at a loss.³

In spite of the strenuous objection on the part of many substantial members of the community, Delaware has availed itself of the opportunities for assistance presented by the Federal government. Education, health, and aid to the indigent, the crippled, the aged, the disabled and the blind—all these aspects of the public welfare receive grants from the national authority. Maternal and child welfare, both in respect of health of the recipients and in respect of their general well being, has long been benefited by Federal largess. The administration of employment security

* The "Federal Fund Account" has been established to receive all Federal moneys unless the Federal government specifies that a grant go into a special fund. 41 *Delaware Laws* 77 (1937).

comes within Federal aid. Agriculture, forestry, wildlife, and conservation share in the Federal-state joint programs. By far the greatest recipient in terms of actual dollars received from the grants-in-aid system is the highway department. The newest agency to obtain Federal moneys is the Department of Civil Defense. The old line military organization—the National Guard—receives aid in many ways, not all of which can be properly classified as grants-in-aid to the state government. The construction of armories and airports is, however, a more definite contribution to the physical property of the state, and in this respect the adjutant general's office of the Guard is paid sums on contracts for both construction and maintenance.

The total Federal grants-in-aid received in 1953 by Delaware amounted to \$5,481,000. This figure was the highest ever obtained by the state from the national government. In 1940 the amount was \$1,657,000. In 1950 it passed the \$4,000,000 mark for the first time, and since then has been increasing steadily.

Evaluation of the Grant-in-Aid System

Undoubtedly the grants to the various governmental activities have had the effect of building up the State agencies charged with their administration. Had it not been for Federal aid in the area of welfare, there is little reason to believe that this phase of state operations would have assumed the role it now enjoys. Likewise the same can be said for the position of the highway department. As a direct result of the establish-

TABLE 20
FEDERAL GRANTS-IN-AID TO DELAWARE, 1940-1953
(Large categories only)

<i>Year</i>	<i>Total (000)</i>	<i>Highways (000)</i>	<i>Public Welfare (000)</i>	<i>Education (000)</i>	<i>Health (000)</i>	<i>UCC (000)</i>	<i>Agriculture (000)</i>
1940	\$1,657	\$ 614	\$ 278	\$286	\$ 79	\$228	\$172
1941	1,922	741	313	390	83	224	171
1942	1,918	709	317	434	84	194	172
1943	1,774	192	302	638	110	136	191
1944	1,927	280	217	890	176	145	211
1945	1,843	155	225	831	258	136	232
1946	1,410	272	224	267	229	202	211
1947	2,507	1,048	312	397	208	299	234
1948	2,846	1,099	420	506	207	346	224
1949	3,502	1,559	637	479	186	361	210
1950	4,398	2,146	814	449	314	408	212
1951	4,673	2,042	903	669	304	444	223
1952	4,896	1,647	1,145	835	378	541	350
1953	5,481	2,432	1,193	674	288	417	477

Source: United States Bureau of the Census, *Compendium of State Government Finances*.

ment of the first highway grant, the state formed the present highway commission. Centralization of highway maintenance and general construction which eventuated in 1935 was an outgrowth of the Federal requirement that a single responsible agency be formed for the administration of the grant-in-aid.

Although counties still are required in some instances to contribute to the operations for which the United States government has allotted funds, the counties are given no authority for the handling of these funds. For example, the counties match the Federal-aid public assistance grants, but the State administers public assistance. Thus the trend toward reposing more and more governmental power at state level has been augmented tremendously with the advent of Federal aid. In truth, therefore, the charge, expressed by those who are opposed to state aggrandizement, that grants-in-aid abet the tendency toward centralization, is well founded.

Closely associated with the concentration of authority over public services at the state level is the rise of strong pressure groups who wish to shape the direction of the spending of the Federal funds. The pressure groups are aware of the Federal aid and press their demands to have the State use the money available. Once a pressure group knows that Federal funds are available, it spares no effort in getting the state to make the necessary matching appropriation. Thus Federal money has meant an increase in the participation of interested people in the administration and work of the several agencies benefiting from grants-in-aid.

Although the state agencies in charge of the spending of Federal grants are responsible to the state legislature, it is a fact that these agencies find themselves reporting to both the state and the Federal authorities.⁴ Actual administration is in the hands of the state, but it is nonetheless true that agency administrators look to their opposite Federal numbers for advice and suggestions, and that this advice sometimes assumes the role of direction.*

With respect to state employment, the Federal government has brought about the introduction a skeletal form of merit system. Delaware has been remiss in developing a state merit civil service in spite of numerous recent attempts to bring it about. In 1939 the Federal government threatened to cut off certain aid if some procedure were not adopted to place employees handling these funds on a merit basis. As a result of this threat, the several state agencies using these funds set up a commission for the purpose of testing applicants for positions with them. Presently, the Department of Public Welfare (in the divisions in which Federal money is used), the Commission for the Blind, certain divisions of the State Board of Health, the Mental Hygiene Clinic at the Delaware State Hospital, and

* For an astute general discussion of this aspect of Federal-State relations see John A. Perkins, "State Legislative Reorganization" in *American Political Science Review*, June, 1946, pp. 510-21.

the Unemployment Compensation Commission have the merit system of appointment. So far the state has refused to extend this coverage to other agencies.⁵

Because Federal grants are governed by Federal accounting practices, these grants have helped bring improved accounting procedures to Delaware. The state auditors have instituted, over the course of the period in which the grants have been in effect, an improved accounting system for all state agencies. Some of this improvement can be traced directly to the Federal grant-in-aid procedures. In connection with the General Fund (devised under the One Fund Law), which has abetted the control by the governor over state moneys, there has been established a Federal Aid Account into which money received from the Federal government is covered directly. From this account it is transferred to the agencies designated by Federal law to receive the aid. Thus the Federal funds do not go directly to the agencies (with one or two minor exceptions as in the case of the aid in agricultural extension work) but come to the state treasurer. The funds are then subject to the usual pattern of state disbursement. This system permits the governor and the state auditor to keep close touch upon the distribution of Federal grants among the agencies and the use to which these funds are put.

In addition to direct effect of the national administration on the conduct of state government, there is an indirect influence that is not often discerned by the casual observer of Federal-state relations. This is found in the manipulations of the Federal authority in areas such as banking. Here the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the United States Treasury all have effect upon the conduct of the banking industry in a state. State banking authorities are under the necessity of following the directions of the Federal agencies. The banking commissioner in Delaware often finds himself in a purely adjunctive position when it comes to laying out the basic banking procedures for the State. There have been rumblings on the part of some bankers concerning this Federal interference, but so far there has been no concerted move to relieve the Federal pressure.

To a great extent this same situation is found in agriculture. Here the county agents and the Extension Service find themselves in many respects responsible for the effectuation of the Federal farm program in the state. Although the Extension Service and the county agricultural agents do not have to follow the suggestions of the Federal Department of Agriculture, there is a strong tendency for them to cooperate with the Federal department. Within recent years, however, the tendency has been for the state to assume a greater share of the costs involved in agricultural research. This fact has been indicative of the intense interest in state affairs shown by the state agricultural agencies and of their desire to direct their efforts in the areas they feel are important rather than follow the lead of the Fed-

eral agricultural authorities. It should be pointed out that State agricultural research has been tremendously stimulated by the Federal research programs.

FEDERAL-LOCAL RELATIONS

In view of the chary attitude of many Delawareans toward Federal aid to the state, it would appear that any effort by the national government to help localities directly would be rejected. Such, however, has not been the case. Beginning in the 1930's with the onslaught of the depression, the Federal government gave direct assistance to some of the municipalities. Wilmington was the chief recipient of this help inasmuch as its citizens were hardest hit by the ravages of the economic breakdown. Direct relief came to the State's first city in 1933 and was continued in diminishing proportions until 1935. In the suburban areas surrounding Wilmington proper, Federal aid was furnished in the form of direct relief to New Castle County. This situation caused a serious clash between the governor and the legislature, which latter body refused to match the Federal government's help. By resorting to a county income tax program, the governor was able to meet the Federal demands and at the same time mollify the legislature which was adamantly opposed to enacting any general relief fund for Wilmington. The national government at the time was charged by many downstaters with "interference" in local affairs, and the resentment against the southern attitude was voiced strenuously in the northern end of the State.

Apart from the emergency grants of the 1930's, Delaware municipalities have received little moneys directly from the Federal government. All health and welfare aid goes directly to the state treasury and from there is administered by the several state administrative agencies. Federal aid to education (with the exception of certain grants made directly to the University of Delaware under the land grant acts and agricultural assistance laws) is made to the state educational authorities and is dispensed by them to the local units.

The general absence of direct financial help to the localities does not mean, however, that Federal-local relationships are non-existent in Delaware. Local boards of health have from time to time availed themselves to the services of Federal health officers. As recently as 1947, during a polio epidemic in Wilmington, the local health officials called in the United States Public Health Service to help them combat the disease. State officials took a rather dismal view of these proceedings, but being unable on their own part to give the needed assistance had to acquiesce. In the field of public housing, the Federal government has moved with some degree of force, particularly where military and defense areas are involved. The Dover Housing Authority, established to cope with the

spreading military installations in that area, has found itself working closely with national housing officials. The State Housing Board has been largely by-passed in these arrangements. Low rental housing projects have been started in the City of Wilmington. They have been the subject of heated controversy from time to time because of the Federal government's regulations concerning types of tenants, maintenance, and basic facilities. Slum clearance programs under the supervision of the Wilmington Housing Authority are financed by Federal and municipal moneys.

INTERSTATE RELATIONS

Through the course of its existence as a state Delaware has always been ready to work with its neighboring commonwealths and the other states of the Union in a spirit of mutual respect and reciprocity. It has always been rather closely associated with Pennsylvania to the north and with Maryland to the west and south in meeting common problems. From its earliest days the State has had informal agreements with Pennsylvania whereby certain of the welfare institutions of that state were made available to Delaware. Exchange of information relating to coastal waterways and interstate transportation affecting Maryland and Delaware has occurred between these states for the better part of a century. Relations with New Jersey long remained strained, particularly in respect of the boundary claims of Delaware. Once these claims were resolved by the U. S. Supreme Court in 1934, the atmosphere between the two states began to clear. Today there is a constant flow of information between these states in respect of transportation, health, and police. The fact that the metropolitan area of Wilmington extends for several miles across the river into the surrounding countryside of New Jersey has tended to orient the local population there toward northern Delaware. The Delaware River Memorial Bridge, although built and operated under the authority of Delaware, came about as a result of agreement between New Jersey and Delaware.

The course of the Delaware River flowing from the southern reaches of New York to the bay has pulled the states along its banks into a sort of partnership. The Delaware River Basin is one of the country's industrial beehives. The river and bay form a course over which a large share of the nation's foreign trade is carried. The regulation of the river traffic and the mutual protection of water rights and public health have long been the subjects of the joint endeavor of the four states of New York, New Jersey, Pennsylvania, and Delaware.

Contact between Delaware and other states in such matters as extradition, interstate compacts, and uniform laws has also been on the increase.

Extradition

The power of extradition in Delaware rests initially with the governor. He may call upon the attorney general to render an opinion as to the facts and the law whenever a demand is made by the governor of another state to return a fugitive or whenever a request is made to the executive authority in another state for the return of a fugitive from Delaware. In case a request has been made to return a fugitive to another state, the governor may issue a warrant to the sheriff of the county in which the prisoner has been apprehended to bring him before one of the state judges, who, upon hearing, may commit him to the county jail to be delivered to the authorized agent of the state making the request. Thus the governor is spared the duty of hearing extradition cases.⁶

Interstate Compacts

Delaware has entered over a score of interstate compacts to date. Some of them are of minor significance, dealing with boundary adjustments and exchange of information and services respecting parole and probation of prisoners; while others have assumed major importance in respect to the protection of the health, sanitation, and conservation of the natural resources. In the latter category, one of the more famous of the compacts among the states is that forming the Interstate Commission on the Delaware River Basin, more popularly known as INCODEL.

The purpose of this compact, established in 1936 by New York, New Jersey, Pennsylvania, and Delaware, is to correct and control the pollution of the waters of the Delaware River and to promote the natural resources of the Delaware River Basin. The four states agreed to formulate plans to keep the waters of the Delaware River and its tributaries in a clean and sanitary condition. No raw sewage or industrial wastes are to be discharged into the waterways unless the discharges have been chemically treated thus rendering them incapable of polluting the streams. Maximum utilization of the natural resources of the Delaware Valley is the aim of the commission, a joint board to which members are appointed by the governors and legislatures of the four states. Recently the commission, working through its executive officers, has developed a \$150 million project to rectify conditions among industrial plants from which issued waste products harmful to the fish and wildlife living in and along the Delaware River and its tributaries. During the twenty years of its existence the commission has achieved great success in its operations.

In 1951 the state legislature approved a compact drafted by the states of New York, New Jersey, Pennsylvania, and Delaware "to provide for joint action among these states in developing, utilizing, controlling, and conserving the water resources of the Delaware River Basin in order to assure an adequate water supply."⁷ To this end a Delaware River Basin

Water Commission was formed; each signatory state sends to this commission three members, appointed by their respective governors for terms of five years each. The commission has the power to "acquire, own, hire, use, operate and dispose of real and personal property." It also has the power to borrow and to issue bonds in its own name. Whereas INCODEL is basically concerned with the conservation of the river as a natural resource, the Delaware River Basin compact is concerned with the orderly industrial and public use of the water supply.

As stated in the organic act, the chief purpose of the compact is to develop the water resources of the Delaware River Basin in order to provide sufficient water for industrial and household purposes in that area. It has the further purpose of developing the use of hydroelectric power, and to this end the commission may enter into contracts for the sale of such power, although the agreement contains restrictions upon the transmission and distribution of power by the commission. There is little doubt that the need for such an arrangement in this important area exists.

In 1951 the State of Delaware entered into a blanket compact with all states for the purpose of providing mutual aid in meeting emergencies of disaster from enemy attack or other cause.⁸ To this end the effective utilization of the resources of the contracting states are to be made available together with personnel, equipment, and supplies that a state has at hand. The directors of civil defense among the contracting states form a committee that has the power of implementing the compact. The states cooperate with the Federal Government in the formulation of civil defense plans and programs, and free exchange of information among the several states and the Federal authorities is contemplated. Although this compact is so general and all-inclusive as to place it outside the usual categories of interstate compacts, there is little doubt that a plan such as the framers of this compact have envisioned is highly desirable.

In the discussion of the preservation of natural resources appearing in the chapter on conservation reference was made to the Atlantic States Marine Fisheries Commission, which was formed in 1942. This commission, to which Delaware sends three members,* was created as a result of a compact among the fourteen Atlantic seaboard states. The purpose of the agreement is to promote the better utilization of the fisheries (marine, shell, and anadromous) along that seaboard and to prevent the waste of such fisheries from any cause. Each signatory state makes an annual contribution to cover the expenses involved in the enforcement of the compact. The auditor of the State of Delaware may make examinations of the books of the commission from time to time and report his findings to the governor and the legislature. This action is in accordance with the

* One is a member of INCODEL, one a legislator serving on the Commission on Interstate Cooperation, and one, appointed by the governor, with knowledge of an interest in the marine fisheries problem. *Revised Code of Delaware* (1953), Title 7, sec. 1502.

agreement and in view of the contribution made by the state legislature of Delaware to the interstate commission.

Delaware is a member of the Council of State Governments. It has co-operated with that organization by creating a Committee on Interstate Cooperation.⁹ This group consists of nine members, three of whom are chosen by the state Senate from their own number, three are chosen by the state House of Representatives from among their number, and three members are appointed by the governor. The governor himself serves in ex officio capacity but has no vote. Actually this commission is made up of three committees, the members from the Senate and House serving on standing committees in their respective bodies. The three persons named by the governor are known as the Governor's Committee on Interstate Cooperation.¹⁰

The function of the commission is to participate as representatives of the State of Delaware in the projects organized and directed by the Council of State Governments. The commission encourages members of the state administrative agencies to cooperate with their opposite numbers in other states. The commission also attempts to advance cooperation among the states by facilitating the adoption of interstate compacts, to encourage the enactment of uniform statutes (and there is also a commission on uniform laws which is discussed below), and to advance the interchange and clearance of research and information among the states. The commission reports to the governor and to the General Assembly within fifteen days after the convening of the regular legislative session. The members serve without compensation, but nominal expenses are met by appropriations from the state treasury. Delaware also contributes to the support of the Council of State Governments.

Uniform State Laws

Delaware has adhered to the general program of the National Conference of Commissioners on Uniform State Laws. The Uniform Laws Commission of this state has three members appointed by the governor, one from each county, for a term of four years. The appointments are on a partisan basis, and the appointees are always members of the state bar. Usually the practice is for copies of proposed uniform laws to be sent by mail to the Delaware commissioners and they in turn have the bills introduced in the legislature. Sometimes consultation is obtained from the Legislative Reference Service.

Delaware has agreed to nearly a score of the uniform state laws. Aeronautics, bills of lading, conditional sales, extradition, fraudulent conveyances, negotiable instruments, out-of-state parolee's supervision, partnership, sales, out-of-state witnesses, trust and warehouse receipts, arrest, and support orders have been the specific subject fields in which the state has agreed to adopt uniform laws. The commissioners make recommenda-

tions to the governor concerning changes in or adoptions of uniform laws which changes may necessitate legislative action on the part of the General Assembly. The governor submits a report containing his recommendations to the General Assembly. The commissioners themselves also see that bills that have the governor's advance approval are made ready for proper introduction, to the legislature.

Conferences of State Administrative Officers

Delaware officials hold membership in the several associations organized for dealing with the common problems facing administrative offices among the states. The Governors' Conferences have long been attended by the chief executives of Delaware, although the Delaware governor has not played a significant role in these affairs. Delaware governors have from time to time attended regional meetings of the state chief executives. The state banking commissioner, attorney-general, insurance commissioner, and secretary of state are members of organizations dealing with the problems confronting their respective offices. Several minor officials, such as the motor vehicle commissioner attend conferences concerned with the affairs of their offices.

STATE-LOCAL RELATIONS

In any discussion of state-local relationships in Delaware, emphasis must be placed upon the fact that government in the First State has retained a strong overtone of localism. The preceding chapters have shown in some detail the prevalence of this local tone. The smallness of the State has helped perpetuate this feeling, although, at the same time, it has aided the concentration of governmental power at state level. The informality that pervades Delaware state government thrives upon the potency of local political power. Not only the legislative branch but also the administrative branch of the state government reflect the strength of the local forces. With these thoughts in mind, therefore, it is extremely difficult to talk at length about state-local relationships unless one were to repeat much of what has already been said.

Local government in Delaware is the creature of the state authority. The general power of police which reposes in the state government can be and is used to render local government completely within the purview of the state capital. Local agencies such as the boards of health are subject to general regulations issued by the respective state boards. Special school districts, which for most purposes are autonomous, come within the aegis of the State Board of Education in the matter of general suggestion and advice. The taxing power of municipalities is usually determined by the legislature.

State Supervision of Local Units

It may be said that the State can do anything it pleases concerning local government, yet the political practicalities forbid any unwarranted use of State power. One outstanding example of this fact is the relationship of the State government with the City of Wilmington. In theory, the State could do whatever it pleases concerning the city, but actually little direct control is exercised either legislatively or administratively over the municipal functions of the State's first city. To some degree, Wilmington is an enclave in the State of Delaware. Its uniqueness places it a bit beyond the routine and cursory supervision which the State government extends over the other municipalities.

There are, of course, instances in which the legislature has intervened in the city's affairs. One example is the intervention in connection with the farmers' markets. Under state law, the city council may not restrict or prohibit farmers from exposing and selling fresh meat and other products produced by farmers in any street that may at any time be appointed for use as a curbstome market.¹¹ The locating of the curbstome markets on some of the city streets with heaviest traffic has caused great difficulty for the police, yet apparently nothing can be done until the legislature decrees.¹²

From time to time legislative action has caused serious difficulty in the policing of the city. In 1951 the legislature permitted the five-day week for city police with the result that part of the time the city's protective force was undermanned. In providing that the city council must subscribe to the school budget determined by the Wilmington Board of Education, the legislature has tied the hands of the city in one of the largest areas of municipal finance. In spite of these aberrations, however, Wilmington has gone pretty much its own way in the matter of its internal operations. The chief deterrent to amicable state-local relations as far as Wilmington is concerned is that the people of the city as citizens of the State of Delaware are penalized in their representative power because of the inequitable legislative apportionment that prevails.

From time to time there have been movements to gain "home rule" for Wilmington, but it has always been difficult to settle on an exact formula as to what powers would adhere to the city. Several recent governors have stated that they were favorably disposed to some form of home rule for the city, but no bill that has been proposed has succeeded.¹³ One of the chief obstacles facing the granting of home rule to Wilmington is the opposition of the suburban areas; the suburbs are opposed to being placed in a position where they could not have some control through their representative in the legislature over the activities of the city, particularly in respect to those activities affecting the suburban areas. For example, under home rule Wilmington might institute a wage tax, which would fall heavily

upon residents of the suburbs who work in the city. There has also been steady opposition to home rule in Wilmington on the part of many down-state legislators because they feel that some plot is afoot in the city to wean itself from all form of legislative control. There is also some fear on the part of educators in Wilmington that once the city is given home rule the legislature will not make appropriations for the Wilmington School District, which appropriations today meet the bulk of the district's expenditures.

As mentioned previously in the discussion of county government, one of the most urgent problems in state and local relationships is that arising from the "rurban" areas in northern New Castle County. In these fringe districts surrounding the metropolitan center of Wilmington and lying outside any of the incorporated towns, there is constant pressure to have the State move in and administer needed facilities. The county officials often find themselves powerless to act in situations involving public utilities and general health. As an example, the large area known as Claymont in the extreme northern end of the State has pressing need for proper sewerage and water facilities due to the rapid expansion of the population in this area. Claymont is not a town, rather it is a geographical area depending for its municipal controls upon legislature, county, and state administrative agencies. The citizens of the area have had cause for severe complaints concerning water supply, yet appeals to the county authorities are unavailing. In desperation the complaints were taken successively to the State Board of Health and then directly to the governor.¹⁴ Finally a remedy was effected. Somewhat similar situations arose in respect to traffic problems in the area. Direct appeal was made to the governor, who personally saw that the highway commission installed traffic signals at vantage points in the locality.

When certain municipal areas have become flooded the State Board of Health has had to move into these areas because town and county authorities were unable to meet the threat of disease, yet in those instances the State agents were often caught by the dilemma of having to dictate solutions and at the same time having to get the cooperation of local officials before acting. Local authorities look with disfavor upon state agencies "interfering" in so-called local problems, yet those same authorities are often completely incompetent in the face of an emergency.

Many times the impasse that grows out of state and local interaction is resolved through informal arrangements within the state agencies. Membership on some of the more important administrative commissions, which are often called upon to work closely with local groups, is made up of persons who are in good local standing. These persons are able, informally, to understand the thinking exhibited by the local citizens and to gain their consent and cooperation in the joint state-local operations. The highway commission, consisting as it does of members from the several counties

and of the two major parties, can usually employ this informal approach with good results. The rapid expansion of population in northern New Castle County, however, is making these informal solutions more difficult to accomplish. The result is that nuclei of dissension and discontent are beginning to form largely because it is becoming extremely difficult to get local government to function adequately in this area.

One indication that the General Assembly is recognizing the problem of caring for the needs of built-up unincorporated places is seen in the expansion of the debt limit granted the New Castle Levy Court. Today, county business is big business becoming bigger. Mere extension of debt capacity, however, is not the answer to the basic problem. Essentially, the situation is one of a socio-political nature in which the existing governmental arrangements are anachronistic. The state authority will have to decree a reshaping of governmental architecture to meet the needs of the situation. Whether this will be done in time is itself one of the most engaging questions of state-local relations in Delaware.

STATE-LOCAL FISCAL RELATIONS

In view of the fact that many of the public services, such as highway management and welfare work, in Delaware are handled through the state and not by local authorities, there are few grants-in-aid made by the state to the communities. In the case of the special school districts, appropriations are made by the legislature directly to these districts; these appropriations are greatly augmented by the funds collected through local school taxes levied directly by the district. Funds are also made available by the state on a municipal level to private charities, to ambulance corps, to firehouses, and to hospitals.

One further aspect of state-local relations in Delaware is the informal process by which the State and local areas have become differentiated in respect of taxation. Income and franchise and motor fuel taxes are used exclusively by the state.* Certain business taxes are collected by both the state and the localities. The state does not use the general property tax. This vast tax area is left to the counties and the towns, and is their chief source of revenue. Delaware has not as yet been drawn into the problem of double taxation (except in the case of some mercantile levies and in real estate levies at county and municipal levels).

At one time New Castle County was obliged to avail itself of an income levy, and there is talk now of instituting a payroll tax in Wilmington. The limited land area of the northern county precludes much increase in the revenue from taxes on real property unless the rates are raised precipitously, an action viewed with distinct disfavor. Sales taxes would be in-

* There has been agitation on part of several towns to have state share part of the gasoline tax with the local communities for purposes of local street maintenance.

feasible because of their regressive nature; thus the direct income tax appears as the only practical alternative. Suggestions have been made to the effect that the state increase its income tax and turn over part of that revenue to the localities. This suggestion is completely incompatible with the theory of local autonomy, which has great support in Delaware. So far, nothing workable in answer to the question of state-local taxation has been presented.

NOTES

¹ See statements by both Delaware Senators in the *Wilmington News*, April 1, 1948.

² See *Wilmington News*, April 1, 1948.

³ See *Wilmington Journal-Every-Evening*, October 27, 1945.

⁴ See 45 *Delaware Laws* 83 (1945).

⁵ See *Wilmington Journal-Every-Evening*, November 29, 1939.

⁶ *Revised Code of Delaware* (1953), Title 11, ch. 25.

⁷ 48 *Delaware Laws* 276 (1951).

⁸ 48 *Delaware Laws* 281 (1951).

⁹ 42 *Delaware Laws* 202 (1939).

¹⁰ *Revised Code of Delaware* (1953), Title 29, chap. 39.

¹¹ *Revised Code of Delaware* (1953), Title 22, sec. 104.

¹² See commentaries in *Wilmington News*, March 4 and September 11, 1952.

¹³ *Wilmington News*, December 14, 1954.

¹⁴ See *Wilmington News*, July 20, 1953.



CHAPTER 26

The Look Ahead

FROM A CURSORY study of the governmental process in Delaware one might readily arrive at the conclusion that though change may be in the offing its scope will be measured by the ability and desire of the new people recently come to the state to make their voices heard on the hustings. Gradualness has always been the watchword in the First State, it therefore remains to be seen whether the new social forces will follow the old pattern of moderation and slow change or break through the pattern of conservatism and cut a fresh design of governance.

Here and there sharp tones of basic conflict can be heard. These sounds reveal a growing inharmony among the strains of culture and modes of living that go to make up the present society. Some of the discord comes from the mere rush of the newcomers adding to an already mounting population, but a great deal of conflict can be ascribed to the pressure of modern living upon a moral system long worn thin by the passage of time. The new divergencies in religion, economic pursuits, and social values have broken the pattern of cultural homogeneity that pervaded the First State for close to two centuries.

There is a decided difference today in the concentration of population from what obtained a short half century ago. The once tight-knit, self-sufficient communities are being overrun by newcomers, who for the most part make their homes in recently erected housing projects situated on the peripheries of the old towns, particularly in the northern part of the State. Into these projects have poured thousands of industrial and clerical workers whose societal roots barely touch the soil on which their homes are built. These people give little evidence of continuing the patterns of thought long held in the small towns and villages of former years. They do not receive their status from membership in a local community. The

rural morality has more of an irritating effect upon them than an influence on their thinking. These, the new people of Delaware, have yet to form the political mores that will give basis to their attempts at political organization. Consequently the present formal governmental arrangements, which reflect a by-gone political era, are often inadequate in terms of ability to meet the requirements of the new society.

Basic to the maintenance of the existing governmental organization is the state constitution. This document is a reflection of the political norms of the nineteenth century. The constitution places tremendous power in the legislature. Legislative supremacy has produced a lack of political leadership, and has made it well nigh impossible for a planned legislative program to evolve. In spite of the tendency toward the splintering of responsibility, which has resulted from legislative dominance there has been a strong counter movement toward placing the power of direction in the hands of the governor. Much of this power has been of a highly informal nature, but nonetheless it has been and can be quite effective. Its assumption depends to a considerable degree upon the readiness and the desire of the executive to assume responsibility for a legislative program. If a governor refuses to develop a course of positive action, the result is very likely to be one of complete disintegration of political power. Party cohesion is difficult to obtain in Delaware, and, without the leadership of a strong governor, it is impossible to effect party responsibility. Hence, refusal of the chief executive to grasp the reins can only result in an undirected exercise of public power and the fumbling of authority.

The constitution has not given the chief executive much formal help in the assumption of political command, but at the same time it has not, to any great extent, denied him the use of power once he decides to wield it. Several distinct constitutional hindrances are placed in his path, however. Among them is the fact that the state's law officer—the attorney general—is an elective official and in no way beholden to the governor. Thus it might well be that a governor could decide on action that the chief law officer would argue is unconstitutional. The constitution has also provided for a separately elected auditor. This fact coupled with the decision of the legislature to make the auditorship an accounting office as well as an auditing agency places control over the financial operations of the government within this office and takes it out of the governor's hands.

In the field of statutory law, however, the legislature, under its constitutional power, has given the governor authority over the budgetary process. It is this authority that helps form in the greatest degree the informal controls that the chief executive may exercise over the sprawling administrative system. By adroit use of the budget the governor has been able to bring the disparate agencies into line with his ideas of public policy. Although the staggered term of the plural-membered commissions prevents a

one-term governor from assuming control over agency personnel, he can bring administrative operations within his purview by determined use of budgetary recommendations. This is what some recent governors have been doing, and there is little doubt that the future will see increased activity along this line.

The governor also furthers his position in the political process by means of the appeal that his office has to the electorate. Parties have learned that the top name on their tickets is that of the candidate for the governorship. No longer can a party hack be rewarded for long and perhaps undistinguished service by being nominated for the State's highest office. Today the gubernatorial candidate must have political prescience, personality, and demonstrated administrative competency. The one fact that assures the running of acceptable men is the closeness of the vote. The two major parties have about equal popular support. Coupled with a tendency toward a relatively high electoral participation this close competition places both parties on their guard with respect to their choice for the governor's chair. Hence, the governor, knowing of his personal importance to party, can often call the political tune which his party will play in its march on the hustings.

With the increase in electoral participation and the rise of a strong two-party system there has been a growing demand for assumption of party responsibility in the area of policy execution. The governor above all other state officials is expected to direct the administration so that the public demand will be sensed and met. This fact has placed the governor in a very precarious position as far as his relations with the legislative branch is concerned. He must take positive stands on public issues, but by so doing he may alienate legislators of his own party whose particular interests are not shared by the majority of the citizenry whom the governor is bound to listen to if he wishes public support in his endeavors. Here is the core of one of the most pressing political problems of Delaware. The governor is virtually compelled to act for the whole people, yet the legislative help needed to give effect to his program is often withheld because members of that body tend to be intensely local. The possibility that legislative minorities both within and without the governor's party will block a positive executive program is a constant threat to the assumption of forthright action by the chief magistrate.* Unless a governor is extremely adroit in handling his party, his legislative program can be completely nullified.

In addition to legislative intransigence the governor is faced with the tendency toward administrative disintegration. The presence of some

* It should be remembered that 21% of the electorate, as a result of the apportionment in the legislature, can control 51% of the House and over 60% of the Senate.

eighty different agencies, each with a semblance of formal autonomy, renders the unification of executive or at least administrative policy almost impossible. Yet the very size and heterogeneous nature of the administrative system leads to an increase in the governor's control over the administrative arrangements. Present society cannot tolerate the logic of the administrative organization of Delaware, consequently there is unremitting demand that the governor assume direction of the administrative hodge-podge. To do this he must use his wits in creating an informal scheme of surveillance that will neither run counter to the existing statutes nor need statutory enactment to be effective. The treading of such a tight-rope calls for all the skills of a modern statesman.

* * * * *

The need for rethinking in the field of local government is perhaps the most demanding of all the pressures within the governmental system. The rapid increase in the suburban areas, most of which are devoid of direct government, has made complete revision of local political arrangements imperative.

Closely connected with urban and suburban development is the problem concerning party organization at local levels. Recently, the number of voting districts in New Castle County has been increased. The number of representatives on the county committee has been enlarged, but this change has not gone to the heart of the problem of party representation at state level. In spite of the increased representation for urban and suburban areas on the New Castle County Committee, the inordinate power held by the rural areas in Kent and Sussex and at state level has not been decreased appreciably. The convention system permits the concentration of political power in the rural areas and allows the nomination of public officials to be made by those who do not necessarily speak for the majority of the electorate. Party councils tend to be unrepresentative in terms of the mass of party members. The only possible remedy is the introduction of a state-wide primary through which the forces of public opinion could be exercised directly in the nominating process. The demographic changes now occurring in the state will eventuate in a movement for the institution of more direct methods for the presentation of popular demands than now exist. These changes will be fought both openly and secretly, but the outcome of the battle cannot be in doubt. The trend toward a greater participation in party choice is well underway. It is, in fact, one of the more spectacular political phenomena beginning to appear in modern Delaware.

Apart from the procedural aspects of governance that confront the future politics of Delaware there are several matters of substantial importance that demand immediate consideration. These are: the need for new schools, better trained teachers, adequate police protection, improved

sanitation, better built and better maintained highways, and improved public health facilities. All these are the usual demands being made upon state governments; Delaware is no exception in this respect. The big question in Delaware, however, is how will the State meet its obligations in these fields of public need? The obtaining of sufficient revenue leads directly to the most absorbing question in public finance: Who will be taxed and for how much?

States must be careful in the use of the tax power not to place themselves at a disadvantage with respect to other states. On the one hand they must be careful not to drive business from their borders, and on the other hand they must meet the mounting demand for social services or they face diminution in their population, itself a factor in the maintenance of modern industry. Public revenue must be raised, and in Delaware it can come from either taxes or loans. Borrowing, however, is not a long run solution to the problem of how to meet public expense. Delaware has sought to meet the mounting costs of government by resorting to borrowing, but this cannot long endure. Already there are signs showing that public debt in the First State is beyond reasonable limits. Sooner than most people think Delaware will have to begin a forthright taxing program. Then the questions will be: who gets taxed, what gets taxed and for how much? The income levy appears to be the tax which will be most heavily used to meet the rising need. Will this tax remain at individual level or will it be assessed against corporations? If it is retained only at the level of the individual, how progressive will it be? Answers to these questions will not be easy, and they will involve careful scrutiny on the part of the politicians of the fundamental values held by the majority of the electorate concerning the basic relationship of the citizen to his government.

Solving the problem of how to raise revenue leads back to one of the most intricate questions which many Delawareans are now beginning to ask; namely, how long will it take for the new societal concepts to be reflected in the premises underlying government in the First State? Much of what has been said in this book has had to do with the changes that have occurred and are occurring in the values of the people of Delaware as those changes have affected and are affecting state government. The recurring problem in political science is how to gauge the portent of changing value systems and how to judge the effect of change upon the process of government.

There are signs pointing to a growing recognition on the part of an increasing number of people of the need for alterations in the governmental system in order to have it reflect the modifications which have already taken place in the value scheme. Thinking elements in both major parties are now aware of this need. How long it will take for this awareness to

become general throughout the mass of the citizenry is one of the more fascinating questions now confronting students of state government in Delaware. Once that awareness is manifest the next question will be, how long will it take for the new value to be incorporated into the constitutional framework of the First State? That this translation has already begun to take place is indicated by the modifications that have already occurred in governmental structure and function.

Appendix

CHRONOLOGY OF SIGNIFICANT EVENTS

- 1631 Dutch settlement established near Lewes.
- 1638 Swedish settlement established at Wilmington.
- 1655 All Swedish claims in Delaware surrendered to the Dutch.
- 1664 All Dutch territory in Delaware seized by English.
- 1682 Territory on lower Delaware given as fief to William Penn.
- 1704 First separate General Assembly held by three lower counties on Delaware River.
- 1739 First charter for town of Wilmington granted.
- 1774 Caesar Rodney, Thomas McKean, and George Read appointed delegates to First Continental Congress.
- 1776 First constitution for the Delaware State framed.
- 1777 Dover becomes state capital.
- 1789 The Medical Society of Delaware incorporated.
- 1792 Constitution of Delaware revised.
- 1802 Land on Brandywine River bought by Eleuthere I. du Pont. Manufacture of powder begun by du Pont on this site.
- 1827 First free school established.
- 1831 Cotton mills established on the Brandywine River by Joseph Bancroft.
- 1831 Constitution of Delaware revised.
- 1832 Present city charter of Wilmington granted by legislature.
- 1834 Delaware College at Newark opened.
- 1835 Lottery for State and school funds authorized by legislature.
- 1853 Attempted revision of the state constitution fails of ratification.
- 1856 Know Nothings candidate elected governor in Delaware.
- 1861 Attempt made to have Delaware secede from Union.
- 1879 State Board of Health established.
- 1889 Whipping of women abolished.
- 1895 Beginning of attempt by J. Edward Addicks to be elected United States Senator.
- 1897 Present state constitution adopted.
- 1900 Single Tax village of Arden founded.
- 1905 Use of pillory abolished.

- 1917 Delaware State Highway Department established.
Workmen's compensation law enacted.
- 1919 Proposed state administrative reorganization fails of adoption.
- 1921 University of Delaware at Newark established.
General Assembly approves boundary settlement with Pennsylvania. Present borders of state established.
- 1934 Delaware successful in United States Supreme Court in boundary dispute with New Jersey.
- 1935 State code revised.
Jurisdiction over all roads in the state assumed by State Highway Department.
- 1936 First Democratic governor elected since 1897.
- 1939 Permanent Budget Commission created.
- 1941 One Fund Law is passed.
- 1949 State Public Service Commission established.
- 1950 Attempt at state administrative reorganization failed.
- 1951 State Department of Public Welfare created.
State Supreme Court created.
Delaware Memorial Bridge opened.
- 1953 State Code revised and arrangements made for a permanent Code Commission.

POPULATION OF DELAWARE, 1775-1950

<i>Year</i>	<i>Population</i>	<i>Year</i>	<i>Population</i>
1775	37,219	1870	125,216
1790	59,096	1880	146,608
1800	64,273	1890	168,493
1810	72,674	1900	184,735
1820	72,749	1910	202,322
1830	76,748	1920	223,003
1840	78,085	1930	238,380
1850	91,532	1940	266,505
1860	112,216	1950	318,085

LOCAL GOVERNMENTAL UNITS IN DELAWARE, 1953

<i>Type</i>	<i>Number</i>
Incorporated Municipalities	50
Unincorporated Places	52 (approximately)
Counties	3
Townships	0
Hundreds (used for taxing and representative purposes only)	33
Special School Districts	16
Drainage Districts	39
Housing Authorities	2
Parking Authorities	1

GOVERNORS OF DELAWARE SINCE 1901

<i>Name</i>	<i>County</i>	<i>Party</i>	<i>Term of Office</i>
John Hunn	Kent	Rep.	1901-1905
Preston Lea	New Castle	Rep.	1905-1909
Simeon S. Pennewill	Sussex	Rep.	1909-1913
Charles R. Miller	New Castle	Rep.	1913-1917
John G. Townsend, Jr.	Sussex	Rep.	1917-1921
William D. Denney	Kent	Rep.	1921-1925
Robert P. Robinson	New Castle	Rep.	1925-1929
C. Douglass Buck	New Castle	Rep.	1929-1937
Richard C. McMullen	New Castle	Dem.	1937-1941
Walter W. Beacon	New Castle	Rep.	1941-1949
Elbert N. Carvel	Sussex	Dem.	1949-1953
J. Caleb Boggs	New Castle	Rep.	1953—

UNITED STATES SENATORS FROM DELAWARE, 1903-1956

<i>Senator</i>	<i>Party</i>	<i>Term</i>
L. H. Ball ^a	Rep.	1903-1905
J. F. Allee	Rep.	1903-1907
H. A. du Pont ^b	Rep.	1906-1911
H. A. Richardson	Rep.	1907-1913
H. A. du Pont	Rep.	1911-1917
W. Saulsbury	Dem.	1913-1919
J. O. Wolcott ^c	Dem.	1917-1921
L. H. Ball	Rep.	1919-1925
T. C. du Pont ^d	Rep.	1921-1922
T. A. Bayard ^e	Dem.	1922-1929
T. C. du Pont	Rep.	1925-1928
D. O. Hastings ^f	Rep.	1928-1937
J. G. Townsend, Jr.	Rep.	1929-1935
J. G. Townsend, Jr.	Rep.	1935-1941
J. H. Hughes	Dem.	1937-1943
J. A. Tunnell	Dem.	1941-1947
C. D. Buck	Rep.	1943-1949
J. J. Williams	Rep.	1947-1953
J. J. Williams	Rep.	1953-1959
J. A. Frear	Dem.	1949-1955
J. A. Frear	Dem.	1955—

^a Short term.

^b Not elected until 1906 owing to failure of legislature to elect in 1904.

^c Resigned in 1921.

^d Appointed by governor.

^e Elected for short and long forms.

^f Appointed to succeed T. C. du Pont, resigned; Hastings elected for full term in 1928.

UNITED STATES REPRESENTATIVES FROM DELAWARE, 1900-1956

<i>Representative</i>	<i>Party</i>	<i>Term</i>
L. H. Ball	Rep.	1901-1903
H. A. Houston	Dem.	1903-1905
H. R. Burton	Rep.	1905-1907
H. R. Burton	Rep.	1907-1909
W. H. Heald	Rep.	1909-1911
W. H. Heald	Rep.	1911-1913
F. Brockson	Dem.	1913-1915
T. W. Miller	Rep.	1915-1917
A. F. Polk	Dem.	1917-1919
C. R. Layton	Rep.	1919-1921
C. R. Layton	Rep.	1921-1923
W. H. Boyce	Dem.	1923-1925
R. G. Houston	Rep.	1925-1927
R. G. Houston	Rep.	1927-1929
R. G. Houston	Rep.	1929-1931
R. G. Houston	Rep.	1931-1933
W. L. Adams	Dem.	1933-1935
J. G. Stewart	Rep.	1935-1937
W. F. Allen	Dem.	1937-1939
G. S. Williams	Rep.	1939-1941
P. A. Traynor	Dem.	1941-1943
E. D. Willey	Rep.	1943-1945
P. A. Traynor	Dem.	1945-1947
J. C. Boggs	Rep.	1947-1949
J. C. Boggs	Rep.	1949-1951
J. C. Boggs	Rep.	1951-1953
H. Warburton	Rep.	1953-1955
H. B. McDowell	Dem.	1955—

PRESIDENTIAL VOTE IN DELAWARE BY COUNTIES, 1900-1952

<i>Year</i>	<i>Total Vote</i>		<i>New Castle</i>		<i>Kent</i>		<i>Sussex</i>	
	<i>Dem.</i>	<i>Rep.</i>	<i>Dem.</i>	<i>Rep.</i>	<i>Dem.</i>	<i>Rep.</i>	<i>Dem.</i>	<i>Rep.</i>
1900	18,865	22,537	10,644	13,646	3,857	3,930	4,364	4,961
1904	19,359	23,712	11,170	13,198	3,779	4,599	4,410	5,915
1908	22,071	25,014	12,965	14,987	4,093	4,158	5,013	5,869
1912	22,631	16,020	13,009	8,362	4,071	3,192	5,551	4,466
		10,065 ^a		8,035 ^a		673 ^a		1,357 ^a
1916	24,753	26,011	14,894	16,166	4,210	3,813	5,649	6,032
1920	40,036	52,858	24,252	36,600	7,211	6,511	8,573	9,747
1924	33,445	52,439	17,842	35,427	6,935	6,892	8,668	10,120
1928	35,359	68,986	22,464	47,641	5,727	8,335	7,168	13,010
1932	52,983	54,775	32,336	37,546	8,029	6,597	12,618	10,632
1936	68,663	54,574	46,306	37,419	9,558	6,936	12,799	10,219
1940	74,599	61,440	52,167	41,508	9,226	8,079	13,206	11,853
1944	68,166	56,747	49,588	37,783	7,900	7,069	10,678	11,895
1948	67,813	69,588	48,117	47,451	8,174	8,501	11,522	13,636
1952	83,315	90,059	58,387	62,658	9,874	10,144	15,054	17,257

^a Progressive Party in 1912.

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 Agriculture, State Board of
 Auditor
 Bank Commissioner
 Blind, Commission for the
 Children and Youth, Commission on
 Development Department
 Family Court for New Castle County
 Financial Report (Treasurer's Report)
 Forestry Commission
 Geological Survey
 Health, State Board of
 Highway Commission
 Insurance Commission
 Labor Commission

Liquor Commission (now the Alcoholic Control Board)
 Public Instruction, Department of
 Public Service Commission
 Public Welfare, Department of
 Soil Conservation Commission
 Tax Commission
 University of Delaware, Report of the president of the
 Vocational Education, State Board of
 Water Pollution Commission

BIENNIAL REPORTS

The following state officials, boards, commissions, and agencies issue reports every two years:

Permanent Budget Commission
 Delaware State College
 Hospital, State
 Industrial Accident Board
 Library Commission
 Shellfisheries, Commission on
 Unemployment Compensation Commission
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